A LETTER

TO THE

RT. HON. ROBERT VERNON SMITH, M.P.

PRESIDENT OF THE BOARD OF CONTROL,

UPON THE

PROPOSED JUDICIAL REFORMS IN INDIA

BY

THEODORE HENRY DICKENS,

Of Lincoln's Inn, Barrister-at-Law,
and late an Officer of the Supreme Court of Calcutta.

LONDON:
W. G. BENNING & Co., LAW BOOKSELLERS,
43, FLEET STREET.

1857.

LONDON:
J. & W. PIDDUR, PRINTERS, BARTHOLOMEW CLOSE

PREFACE.

THE Author desires to record his grateful sense of the valuable information placed at his disposal by Mr. Dickinson, Honorary Secretary of the India Reform Society. Want of space has alone prevented his making more extensive use of these materials.

EXPLANATION OF INDIAN TERMS.

The Mofussil is the general name given to all India beyond the Presidency towns—the *rus* in contradistinction to the *urbs*.

A *Rupee* is two shillings. To reduce rupees to pounds sterling, therefore, divide by ten: 100 rupees is £10, &c.

A *Lac* of Rupees is £10,000.

A *Crore* is £1,000,000. A Pice is the smallest copper coin.

A *Compound* is the enclosed space round every Indian house, in which the kitchen, offices, stables, &c., are situated.

Vakeels and *Mookteyars* are Indian lawyers.

Burkundauzes and *Peons* are constables.

Darogah is a serjeant of police.

Cazee, *Pundit*, *Amlah*, *Nazir*, *Sheristadar*, are native judicial officers, whose particular functions it is unnecessary to describe.

Naib and *Dewan* are the terms applied to a certain class of head native servants.

A *Zemindar* is a landed proprietor.

A *Ryot* is a cultivator of the soil—a peasant.

A LETTER

TO THE

RIGHT HON. ROBERT VERNON SMITH.

SIR,—After the lapse of many years, the Penal Code of the Indian Law Commission, commonly called "Macaulay's Code," has been fitted with a code of procedure for the Presidency of Bengal, and published with an announcement of the intention of the Indian Government to make it the universal law of that country. This announcement at once raised the alarm of the whole non-official European population of Bengal, and drew forth an immediate expression of their hostility to the proposed legislation. The native population have not as yet, I believe, made any similar demonstration, for an obvious reason, which will be hereafter pointed out; but I know from private sources that some of the most intelligent of them disapprove of the measure as much as their European fellow subjects. Nevertheless, if we may trust the assertions of the semi-official organ of the Indian Government, the *Friend of India*, and of the Calcutta correspondent of the *Times*, the code, as published in England, is now being patched and altered by the local legislative council, and is to be hurried into actual law as precipitately as the necessary forms will permit. I trust, however, that it is not too late to ask

you to interfere, and pause before you make that code the law of India, or, at least, of Bengal, upon some of whose many important provisions its own propounders are disagreed among themselves; upon others of which provisions the local legislative council differ with the propounders; and to the leading principles of which those Europeans who will have to live under the administration of the law which it proposes to introduce offer an unanimous opposition. Surely it becomes the minister of a free country to pause before he plunges into a legislation which excites so much alarm among those for whose supposed benefit it is intended.*

It is not my intention—indeed, I do not possess the requisite knowledge, if I had the wish—to discuss the minor provisions of the code. But there are in its leading principles objections which would be fatal, were all the minor provisions absolutely perfect in themselves. To these objections I respectfully beg your attention.

The principle upon which the proposed legislation rests is, in the abstract, perhaps wise and sound, namely, the introduction of one universal system of law, and of law courts, for every dweller in India, whether Hindoo, Mahomedan, European, half-caste, Armenian, or Jew. The idea of such a code is grand; and if judiciously framed, and administered by competent tribunals, it might be productive of unmixed benefit. But I think it will not be hard to show that this code is wanting in these essentials of excellence.

It is necessary to state here very shortly the present state of law in India. There are two descriptions of courts,—the Queen's Courts, called Supreme, presided over by judges appointed by the Crown, administering English law, and whose proceedings are conducted in

English. These courts have a local jurisdiction in each of the Presidency capitals, and a criminal jurisdiction over British subjects through all India. Secondly, there are the Company's Courts, which are the only tribunals in the Mofussil, and which administer the civil and criminal law of the respective Presidencies, as modified by the regulations and the circular orders of the Sudder Courts, which are courts of appeal from the other Company's courts, to Hindoos and Mahomedans, with a deference to their own laws and religion. When Europeans settle in the Mofussil, they are subject to these courts, to a certain degree, in civil matters; and the half-caste and Armenian are subject to the criminal and civil courts; that is, though Christians, they are subject to Mahomedan criminal law; and as an illustration, I may mention one instance in which a Christian clerk was, for adultery with a Christian woman, sentenced by a civilian, not, indeed, to the hideous mutilation prescribed by the Mahomedan law for that offence, but to imprisonment for three years. There is, therefore, a large Christian population in the interior of India who are the descendants of Europeans, and yet are subject to laws which are repugnant to civilized men. For this state of things the judicial commission propose a remedy. Let us see what that remedy is.

They propose to abolish the Supreme and Sudder Courts, and to form a High Court, which is an amalgamation of these two courts, and is separately and collectively to discharge all the functions these two courts at present discharge; the criminal jurisdiction to be confined within the limits of the present Supreme Court, as a Court of Oyer and Terminer, together with its criminal Admiralty jurisdiction. In all Mofussil cases,

Europeans are to be subject to the Company's criminal courts, presided over by the servants of the Company, administering the laws of Macaulay's Penal Code, as regulated by the procedure of the code now under consideration.

This measure, therefore, sweeps away the special privileges of the British subjects. By the process of amalgamation, it, as they allege, swamps and destroys their peculiar court, a tribunal which they have always held in reverence, and whose administration of the law is the only administration which has given satisfaction and security to the litigants. It introduces a law to which they have grave objections in itself, which is in many respects contrary to the spirit of the constitution, and to whose proposed administrators they have still graver objections.

The judges of the Supreme Court are men of mature age and legal education, unconnected with, and not appointed by, the Executive Government of India. And though it has been asserted by some well qualified to express an opinion on the subject, that even these judges are not sufficiently independent, yet they have, in that respect, an immense superiority over the civil servants of the Company, who are all under a covenant to the Government, are all part and parcel of the executive power, and who, if their decisions run counter to the wishes of Government, are liable to fall, and often have fallen, under its severe displeasure. The proposed amalgamation will constitute a court of eight judges, three to be men appointed, as the present judges of the Supreme Court are, by the Crown, and the remainder by the Governor-General in Council, from among members of the Civil Service, barristers and advocates, un-

covenanted servants of the Company, and vakeels, or native lawyers. Upon this most important provision there was strange disunion among the judicial commissioners. It was carried by the Master of the Rolls, Sir Edward Ryan, Mr. Cameron, and Mr. Robert Lowe, against the late Lord Chief Justice, Mr. Macleod, and Mr. Ellis. The minute of Mr. Macleod shows what some of his objections were; and as they are those entertained in general by civil servants, I shall proceed to examine them as briefly as possible, premising here that while the non-official population view the proposed alterations with the same dread as Mr. Macleod, the cause of their apprehension is exactly the opposite to his, —they fear that those results will *not* accrue of which he is so apprehensive. They know that as long as the government of India remains in its present hands, persons other than the covenanted servants of the Company will *not* be appointed to the majority of the seats on the bench of the proposed High Court. Mr. Macleod fears that barristers, natives, and "other persons" will ultimately "elbow out" the favoured service.

Mr. Macleod's minute contains so many assertions which are untrue (though I doubt not his belief of their truth), and so many strangely illogical conclusions and apprehensions, which are inconsistent with other conclusions and apprehensions expressed in the same paper, that it is not easy to ascertain exactly what his fears are, beyond the general one that the judicial power will ultimately be taken out of the hands of the Civil Service, and vested in judges who will not be completely under the control of the Government. This he regards as an unspeakable evil, political and judicial. Sir John Jervis and Mr. Ellis, in their remarks upon Mr. Macleod's

minute, regard it as a purely political question, and therefore out of their province to determine. It may be doubted whether they were right in this conclusion, and whether it is possible, in the consideration of this point, completely to separate these elements: but, at any rate, the whole question, in all its bearings, is one for *your* consideration. Although Mr. Macleod's minute has not met with the concurrence of his fellow commissioners, it is important to comment upon it as an exposition of the views of the civilians upon the judicial system of India, and the principles which should guide any contemplated reform; and as indicative of the point of view from which Indian politics are regarded by that official class, from which alone Parliament received evidence to any extent as to the state and requirements of that country, during the late Charter discussion. I will now proceed to state and comment on what appear to me the salient points of Mr. Macleod's minute.

His first expression of alarm is at the fact that by the new code "it is not provided that even a single seat on the bench [of the High Court] shall be filled by a member of the Indian Civil Service. This is a great, and, in my opinion, an impolitic innovation. The interests of India, I think, require that at least half the seats on the bench of the new court shall be secured by law to the Civil Service." The proposed law does not indeed *compel* the Governor-General in Council to appoint civil servants in such a proportion; but it *permits* him to appoint them in a larger proportion, namely, of 5 to 3. Mr. Macleod is in dread of a fewer number being appointed than the law permits. We, who know how these things are managed in India, well know the fear to be unfounded. We are only in dread lest the action of the independent

judges of the Crown should be swamped by the numerical force of the subservient and dependent servants of the Company. We feel perfectly certain that four of these five judges will always be civilians, and the fifth occasionally a favourite native, whenever it may suit the purposes of the East India Company to make a flourish at home about their liberal and paternal government, and secure the votes of the British Indophilist. The grounds upon which we base our apprehensions of the constitution and servility of the proposed court will be stated hereafter, and you can judge of their validity.

In short, from the first page of Mr. Macleod's minute, it is clear that his objection to the proposed amalgamated court arises from his apprehension of the infusion of too large a portion of independence, legal training, and knowledge into the Supreme Court of the country, and from the door which it opens to the admission of barristers, natives, and uncovenanted lawyers to the seats of the High Court. He rightly regards it as a move tending to the breach of the barriers so long and carefully erected for the preservation of the close Civil Service. The non-official European population of India, the natives, and uncovenanted servants, would rejoice beyond expression if they thought it would have that effect. *Their* fear is, that many of the framers of the code have been led away by the belief that the permission granted to the Governor-General in Council will be wisely and liberally used by the appointment of the best man, irrespective of class, station, or colour: while they know that as long as the Governor-General is so much under the control of the Court of Directors, and has, moreover, the possibility of a pension as a reward for his subserviency dangling always before his eyes, he will

never run counter to their wishes by a bold infringement on the places of their pet Service; and that thus, under the pretence of a liberal reform, the Supreme Court will be swamped and rendered ineffective, which was wisely erected as a protection for British subjects against the servants and laws of the East India Company—a corporation whose policy has been always despotic and anti-national in spirit, and hostile to the immigration and settlement of Europeans in India.

Mr. Macleod proceeds to assert that under the present system:—

"India is governed wisely, strongly, mildly, and *justly*, to a degree far beyond what would otherwise be possible; *and to the mass of the people of any country it matters little who are its rulers, or what is the form of the government, except in as far as whether it is governed with wisdom, justice, power, and mildness, may depend on those circumstances.*"

How far India is governed in this magnificent way, —what manner of thing that is which is there called "Justice," will be shown hereafter. But whether the writer means that it matters little to a country who are its rulers, or what its form of government; or whether he means to assert that the results of that rule are not dependent upon the two circumstances which he regards as of such small importance, I cannot pretend to say. But he clearly must mean to assert one of these two things. And whichever it be, it is quite enough to terrify one to think that an important legislative task has been entrusted in any degree to the holder of such an opinion.

He then proceeds to say that this scheme "holds out judgeships in the gift of Indian Governors to

the ambitious hopes, not only of barristers, but of other and far more extensive classes of men." Having asserted this, he goes on, in the same breath, to show that the class will not be a very extensive one :—

"I am convinced that Europeans not in the Civil Service, and descendants of Europeans, are the only classes on which the advantage of an extended field for their employment by the Government will really be conferred. It is by them that the civil servants will be elbowed out. The notion that the native population will be benefited is a delusion. The natives will not even be able to keep hold of what they now have in possession."

Why the natives will not be benefited, it is impossible to conceive, as they form the majority of that class—viz., vakeels and uncovenanted servants in judicial employ—which the clause, upon which Mr. Macleod is commenting, admits to these honours. Still stranger is it, that with this conviction he should devote the greater remaining portion of his minute to a vivid description of the fearful danger of their admission. Still more incomprehensible is the assertion which he reiterates at page 241, that the removal of the barriers, "which fence off men not of the close Civil Service from the offices appropriated to that body," would not only give the natives no chance of admission into the coveted precincts, but would deprive them of the petty offices they now hold by favour of the Civil Service; "that protection removed, the energy of the Anglo-Saxon race would triumph over them, and trample them under foot." In short, Mr. Macleod is afraid, first, that the admission of natives to seats of the High Court will upset the whole basis of the British power in India;

then, he is sure that giving them the chance of admission will not only not result in their admission, but will result in their exclusion from all other offices. A man entertaining two such conflicting opinions would only be fit for an asylum. But, as Mr. Macleod is not a fool, we may be sure that he blunders in this fashion in a desperate attempt to conceal the real cause of his evident panic. That cause is easy of discovery. He does not, I am sure, in his inmost soul, fear,—or, if he does, I am sure his fear is groundless,—that the energy of the Anglo-Saxon will trample the native *only* under foot in the contest for judicial honours. His real terror is that the Anglo-Saxon, *and* the native, will "elbow out" the civil servants. He trembles for the slothful security of his fellow civilians, and acutely masks his defence of their overwhelming and improper advantages over all other classes, by an appeal *ad misericordiam* for the "mild Hindoo." Under pretence of a cry for charity, he cloaks a defence of monopoly. He well knows, that if ever the Governor-General used his power of selection with an eye to merit alone, the civilians would stand, as a body, no chance whatever with their non-official competitors, native or European. As to the assertion that the natives would have no chance against the European in a struggle for judicial honours, on account of their want of energy and industry,—it is simply untrue*. As a nation, they are

* It is but fair to Mr. Macleod to state that he apparently forms his opinion on a mistaken assertion of Mr. Halliday's (page 241):—"English barristers from the Calcutta Supreme Court are now largely practising in the Sudder Court, and bid fair to monopolize the practice there." When I left India, in September, 1855, there was not, and had not been for some time, a single barrister practising in the Sudder

very inferior to the Anglo-Saxon in bodily energy; but they are marvellously industrious in many respects. They will not walk or run an unnecessary yard, but they will work sitting for hours. Law may be learnt even in a recumbent posture, and they often learn it remarkably well. It is a notorious fact that a very large number of the uncovenanted service, European, native, and half caste, are far superior to the great majority of civilians as lawyers. How many civilians would Mr. Macleod dare to bring into competition in a fair examination with such men as Ramapersaud Roy, Lokenath Bose, or Prosonocoomar Tagore, or Mr. Waller,* and many others that might be mentioned? I much doubt if there is one single individual in the whole Civil Service who would approach anywhere near these men: the difficulty would be to find examiners sufficiently learned and able to form an estimate of their learning. Do you doubt my assertion, that the uncovenanted judges are often abler than their covenanted superiors? I refer you, in reply, to an answer of Mr. Marshman before the late Charter Committee (p. 343), a witness undoubtedly well-affected towards the Company, and the intimate friend of some of its most distinguished members:—"The business of the Judges' Court is to

---

Court. There is now one; and I believe this gentleman is the only barrister who has *ever* practised regularly in the Sudder, and he gets little business. It is true, that in very important cases the leaders of the bar are sometimes taken into the Sudder; but they demand such heavy fees for going, that the occurrence is not more common than the 500 guinea special retainers to our leaders in England in circuit cases.

* The first, third, and fourth are or have been practising vakeels in the Sudder Court. The second is a member of the uncovenanted service, in judicial employ, and distinguished for his knowledge of revenue law.

hear appeals from the subordinate courts, which are for the most part filled by natives, thoroughly versed in the law and procedure of the courts, and men who have obtained long and admirable judicial experience,—*to hear appeals from men who are far better acquainted with the law and practice of the courts than himself.*"

Such is the evidence of Mr. Marshman (whose testimony, by one of the soundest of all rules of evidence, must be taken as strongest when against civilians, from his bias in their favour) as to natives and those "other persons" whose admission to the chance of a seat on the bench of the High Court is so feared by Mr. Macleod. Why should men, who for a small salary, and under every disadvantage, can thus surpass their more favoured brethren, be beaten in the race for higher places on equal terms? If they *are* beaten, let them not win the prize; but let them at any rate have the option of a start, and a fair trial. If they then fail, no blame can attach to the Government for their failure. Does any man, who has the slightest knowledge of human nature, suppose that the mere remote chance of success will not be a stimulant delight, and consolation to these men, even if they never attain the prize? Does not every young donkey who goes to the bar in England delude himself with the belief that he may be Attorney-General or Lord Chancellor some day? The chances are a thousand to one against him, to be sure, but he trusts to the unit and ignores the long figure. How many would go through the law's wearing work and sickening delays without this infinitesimal hope—this shade of a shadow? Yet Mr. Macleod, quoting Mr. Halliday, does not think the admission of a native —of one of those men declared by Mr. Marshman to be

so well versed in their business—can be of the slightest use to the High Court, and fears the mere chance of their admission will upset the whole political system of India; to which, what is it possible to reply, but that if your political system rests on no sounder basis than the exclusion from judicial offices of judicial merit, if possessed by a certain class, the sooner it is destroyed the better for the nation who live under it?

As to there being no advantage in the admission of a native judge to the bench, it is self-evident that it depends on the question of his comparative superiority. If a barrister, a civilian, a person of mixed blood, and a native, are all candidates for the seat, and the latter is superior in learning and ability to his competitors, the bench must be benefited by his admission in the exact ratio of his superiority. The benefit of the admission to the bench of a particular individual must always be a question of comparison at the moment when a vacancy occurs. But the general possibility of admission—the right of eligibility—will have a wide and permanent beneficial effect. It will induce a superior class of men to enter into the judicial service, when they know the highest prizes are within their grasp. I am not contending for any advantage for the natives over their European fellow subjects; but I would impose no disadvantage upon them. If they cannot, by reason of indolence or want of intellect, beat their white competitors, by all means let them not be placed above them: if they do beat them, let them win the reward they deserve. Mr. Macleod states his belief that the natives themselves would not desire this boon. It is unnecessary for me to refute this assertion, as he refutes it himself, by subsequently asserting their value of the inferior dignities

now open to them; and why men who love small rewards and places should dislike greater, is a riddle which an Œdipus could not solve.

It would take up too much of my space were I to attempt an exposition of all the incongruities of this minute. I must merely notice a few more instances. It is not worth while to point out the fallacy of the case put, of Sir L. Peel being over-ruled by a native judge. As Mr. Macleod rightly says, "it requires no comment;" its absurdity being self-evident.* So, also, is that of the argument that if natives are to be admitted into the higher judicial seats, they must also be admitted to the higher posts of the army. I may, however, again call attention to the inconsistency in the last paragraph of page 242, where he urges against the admission of natives to eligibility for these high judicial posts, that the bestowal of that privilege upon them now will prevent Government from granting it to them hereafter—"a grace which is not a valueless thing;" and "the consciousness of having got which gratifies generous impulses, and affords pleasure in other ways;" and yet, *eodem flatu*, he declares that it "would in his opinion be detrimental and unacceptable, instead of being a thankfully accepted boon." Neither need I refute the strange relative value which he deems money to possess for the native and European. But I may say, that I fully concur with him in believing, that when once the principle is established of admitting natives and "other people" to the higher seats of the Indian Bench, "consistency will forbid that the existing privileges of the regular Civil Service should be upheld with respect to the appointment to any inferior judge-

* See *post*, page 99.

ship or magistracy." This he regards as a result pregnant with evil,—I, as the only possible basis on which a remedy can be found for the present fearful judicial state of India; and the same remark applies to what he truly calls his "bold opinion" as to the inadvisability of forming a separate judicial service.

I should not have deemed it necessary to enter at such length into this minute, but for the fact that Sir John Jervis and Mr. Ellis subsequently voted in the minority with Mr. Macleod, in the division on the question of the constitution of the High Court,—a vote which I certainly was not prepared for, after reading the minute of those two gentlemen in answer to Mr. Macleod's.

To conclude this portion of my remarks, then, I venture to observe, that if an amalgamated court is to be formed at all, sound policy and justice require the admission of natives, and uncovenanted servants, to a chance of a seat on its bench; not to a *right* of a seat, but to a *chance* of a seat; because amongst these men are to be found some of the ablest servants in the judicial employ of the Company: men profoundly versed in the peculiar law of the Company's courts; possessed of great knowledge of the intricacies of the revenue system, and a much deeper acquaintance with the feelings, customs, and springs of action of the native population than Europeans can hope to attain.

Whether such an amalgamated court as that now proposed is possible, is a matter of opinion upon which there may be some doubt. I confess mine is, that it is wholly impossible, without at least raising the number of the Crown judges to six. The judges of the Supreme Court of Calcutta are already as severely worked as the human frame will permit in that country. They do not, like the judges of the Sudder, avail themselves of the

constantly recurring native holydays,—with one exception.

If both his colleagues are in health, one judge gets three months' holiday every other year. They sit all the rest of the year till five o'clock; and often later; with the exception of about a week at Christmas, a fortnight in October during the great native festival of the Doorgah Poojah, and a few days at the end of May, when the heat becomes nearly insupportable, and the frame, weakened by its long continuance, can no longer stand exertion in the foul atmosphere of the Court. How can men, so worked, add to their labours Circuit and appeal duties? You must clearly increase their number from their own class, appointed after their own fashion, and not by the Governor-General in Council. Five judges are not too many for the Sudder work alone; and the result would be, that if the Crown judges are to lend their assistance to the judges of the Sudder, the business of the Supreme Court would fall into hopeless arrears; for the Supreme Court would derive no counter assistance from the ludicrous lawyers of the Civil Service, most of whom certainly do not possess the knowledge of English law possessed by an average attorney's clerk, and who would lead a life of misery and ridicule if they attempted to adjudicate under the eyes of such an able bar as that of Calcutta. If they dared to meddle with English law, a few weeks would suffice to display their ignorance in so glaring a light, that the force of public opinion would drive them with contumely and disgrace from their seats.

I do not mean for one moment to deny that there are among the civilians men of great talent and industry, who are well acquainted with the leading principles of

law, and who are as good lawyers as it is possible, perhaps, for men to be, who do not make the profession their sole study. But the Sudder judges do not very often consist of the best men in the service; and there is not, even among the best—it is quite impossible that there should be—any man possessed of a knowledge of technicalities and practice and case law, sufficient to fit him for a seat in the Supreme Court. I can conceive no spectacle more amusing than would be the hopeless bewilderment depicted in the faces of the Sudder Bench, while listening to the subtle arguments and distinctions of such a man as the present learned Advocate-General upon a point of pleading.

I am perfectly certain, therefore, that none of the judges of the Sudder could undertake the work of the Supreme Court; and the judges of the latter court have not time to attend to their present duties, with the addition of the Sudder appeal business. If, therefore, the proposed High Court is established, it will be an amalgamation only in name. The avowed object, I take it, of this measure, is to infuse the element of legal training and knowledge into the Sudder Court, by the admission of properly educated judges. That can only be done by an increase in the number of Crown judges; and they must be appointed by the Crown. We cannot trust the Governor-General in Council with the bare permission to select the judges of the High Court from among any others than the civilians; he is too much under the influence of the Court of Directors to set what we know will be their wishes in this matter at defiance. The admission of barristers to a majority of these seats must be guarded by direct legislative enactment. The ministers of the Crown must not part with a patronage,

the exercise of which cannot be more agreeable to them than beneficial to the people of India. Upon these terms alone will the High Court be a really Amalgamated Court; that is, a court in which the English legal knowledge and judicial experience of the Crown judges will be amalgamated in proper proportions with the knowledge of regulation law, and experience of the revenue system, possessed, or supposed to be possessed, by the civil servants of the Company.

Since the foregoing pages were written, the Calcutta correspondent of the *Times* has informed us that the Local Legislative Council objects to the proposed amalgamation. "The civilians," says this writer, very naively, "have no desire to submit their decrees to revision by barristers." How very singular! Ignorance is too conscious of her deformity to venture on an exhibition by the side of knowledge; knowledge dislikes subjection to the caprices of ignorance. This point, which affects the comfort and dignity of the official classes of India,—the only classes, I pray you to remember, who are represented either in the Local Legislature or in Parliament,—is to be "referred" back to England. The officials of India no sooner get hold of the proposed code, than they set about the removal of the only feature in it which affects them personally, turning, however, a deaf ear to the universal remonstrance of the non-official population against the points to which it objects. They will blot out at once the provision which affects them, though they thereby destroy the leading feature of the measure itself, and cut away the main argument upon which the necessity of the code has been defended; but they declare their immediate intention of passing the penal code into law, and thereby subjecting all Europeans in

the Mofussil to the criminal courts of the East India Company, a measure which those men declare is an unconstitutional deprivation of their birthright as British subjects—a measure which they have hitherto successfully opposed, and which, in their universal opinion, will surely, though gradually, destroy the value of their property, and drive them out of the country. The Legislative Council dare to do this, with ample evidence before them of the frightful state of those courts, and the utter incompetence of the judges to which they are proposing to subject the lives and liberties and property of their fellow countrymen; and it is well worth your while, Sir, to note with what cavalier indifference this representation of the governing classes treats the complaints of the governed, not merely with a view to the present judicial question, but with regard to the often-urged request of the non-official population for a proper representation of themselves in their Local Legislature. This question must sooner or later come before Parliament, and I beg you to observe this one instance of the *animus* of the Legislative Council, as at present constituted, and to store it up in your memory. The non-official population of India, native and European, are the only subjects of Her Majesty who have no sort of representation of their own, either local or parliamentary, and no hand in making their own laws.

Let us see how this rejection of the scheme of amalgamation affects the proposed code. In their second report, the majority of the Commissioners observe that the present anomalous state of the law in India would become more insufferably apparent when one High Court presided over the whole country. That objection is quashed by the refusal of the Local Council to amal-

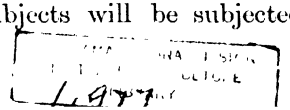
gamate the existing courts, and the argument as to the necessity of a code, upon that ground, falls to pieces. But a very grave consideration arises out of the destruction of the scheme of a High Court, coupled with the determination to subject all classes to the criminal courts of the East India Company. To what court is the appeal to lie from these tribunals, and who are to be the arbiters of life and death? The Sudder Judges? I do not think that such a proposal would be ventured upon in the case of British subjects. Then is it to be the Sudder in cases other than those of British subjects, and in their case the Supreme Court? Why, the anomalous state of law in India will be quite as apparent as it is now, and the business of the Supreme Court increased. You will remember that there is no attempt in the proposal of the Commissioners to supply one of the great wants of India,—a *lex loci*,—and that Mr. Robert Lowe and the late Chief Justice Jervis differed from their colleagues as to the best mode of supplying this want. The effect, therefore, as I understand it, of passing the penal code into law, without forming the amalgamated court, will be, first, to subject all Europeans to the criminal courts of the Company, with an appeal, in cases where death and some of the higher punishments are the award, to either the Supreme Court or the Sudder; and, secondly, it will provide a more rational criminal law, instead of the Mahomedan law, for those classes who are not British subjects, and are also not Mahomedans. It will introduce, as far as regards courts of first instance, an uniform criminal law into the country, by the objectionable process of depriving the British subjects of their indefeasible right of being tried by competent judges and a jury of their

peers, according to the meaning of that institution within the laws of England. But as it appears to me that it cannot be seriously proposed to give British subjects a right of appeal to the Sudder only, the uniformity of the criminal law will be confined only to the courts of first instance, and to the perpetrators of minor offences. The appeal will be to the Sudder or the Supreme Court, as the offender is a British subject or not. If, again, it be proposed to give an appeal in *all* criminal cases to the Supreme Court, you will have the anomaly of one court of appeal from the lower tribunals in criminal cases, of another in civil cases; and I have already observed that you cannot increase the business of the Supreme Court without increasing the number of its judges.

Then, in the present state of proposed reform,—namely, the enactment of new laws without the amalgamated court,—what is to be done with the civil code as proposed by the Commissioners? It clearly cannot be passed in its integrity. Is the jurisdiction of the Supreme Court to be limited, as at present, to British subjects, and those who choose artificially to subject themselves to its jurisdiction? If so, many of the provisions of that code will have to be altered, and the anomalous difference of the law between the Presidencies and the Mofussil will remain *in statu quo*.

To sum up, therefore, the results of the proposed reforms of the law in India,—as far as I have means of ascertaining what they will be when the scheme of the Commissioners has been altered by the Local Legislative Council,—they amount to these:—

The British subjects will be subjected to criminal



courts to which they object, and which they undertake to prove incompetent to administer any law whatever.

The native population will gain no great advantage, unless it be deemed that they will prefer the laws of the penal code to their own criminal law; but they will not (like the British subjects) be subjected to any loss of existing privileges, as they have always been (to their great misery) subject to these courts of the Company.

The Armenian, the Christian who is not a British subject, and the Jew, will be subject to a defined law, and to these same courts; whereas heretofore they have been subject to these courts, either administering the Mahomedan criminal law, or endeavouring to discover what law they ought to administer to the particular delinquent before them.

The first of these three classes vigorously object, not so much to the proposed law, as to subjection to the courts which are to administer it, as a scheme ruinous to their welfare.

It may be doubted whether the second class care much about the matter, one way or the other. Feeling that their condition is already as bad as it can be, they may hope for some amelioration by any reform; but I know, as before stated, that the more thoughtful among them are sincerely grieved that so infinitesimal a portion should be awarded, since their condition is to be made the subject of discussion.

The third class is to a certain degree benefited. They will have *some* law, with the pleasure of knowing that it will be administered by a class of officers and courts which would not give satisfaction if administering a

revealed law; and they will have the undoubted gratification of knowing that everybody is in the same predicament as themselves.

That is the amount of the proposed reform, after a lavish expenditure of money and of the time of many able men—a scheme which terrifies and abuses one class; hardly, if at all, benefits another; and presents a third with a homœopathic improvement of its condition. Is it worth while to take any trouble at all for such a result?

It appears to me that a consideration of the whole question will show you, Sir, that, however desirable the proposed measure of reform may be in some points of view, it is yet a remedy applied only to very small parts of the diseased judicial system of India, and cannot be expected to effect a valuable cure even of those parts: while it will have the effect of spreading the existing disease to a portion of the body politic (and the most intelligent and energetic portion) not hitherto affected by it. There is really no necessity for this. I am so convinced in my own mind that the scheme of amalgamation in its present form will not be carried through the Legislative Council of India, that I think we may assume its rejection. In that case, as before remarked, the main feature of the whole scheme, namely, the introduction of one uniform law, presided over by one High Court, for the whole population of India, is destroyed. But if Government is still desirous of trying a partial reform, if it thinks some use should be made of the penal code, why not confine the trial to those classes who cannot suffer by it to any great degree, and that class who must benefit by it to some degree? This may

be done by enacting the penal code as the law to be administered by the East India Company's Courts to all save British subjects, and leaving the latter subject, as at present, to the Supreme Court and their own laws. I have said, as far as I have means of ascertaining, that I believe the natives would not object to the exchange of this law for the Mahomedan criminal law; and its introduction would undoubtedly be a benefit to those classes who may be said to possess no laws of their own. I see no objection to this as an experiment, a compromise, and temporary measure, though it is to be ardently hoped that the day is not far distant when a nobler and ampler reform will be granted to the judicial evils of India.

But any such reform, deserving of the name, must begin in another direction—with the courts of the East India Company, and the men who preside over them. The best tools in the hands of bad workmen can never produce anything but indifferent results; and in this case you have judges and magistrates wanting in legal knowledge; without administrative experience; without the check of a bar; hardly able to speak, and certainly not to read, the language in which their proceedings are recorded, and very often not understanding the dialect of the witnesses; at the mercy, in an extraordinary degree, of ill-paid native underlings; men of extreme youth, discharging other functions incompatible with judicial duties; totally without independence; each man *ex officio* a judge, whether fit for the office or not; with more work than he can do, however honestly disposed, and yet without any incentive to work at all:—what in the world can you expect from an *average* man

under such circumstances? and what manner of thing, think you, is that which they dispense, and which Mr. Macleod, with grim facetiousness, calls Justice? A law made by the angels of heaven, and administered by such judges sitting in such courts, could scarcely be anything short of a curse.

The British settler has always been exempt from these courts in criminal matters. Had he not been so, he would not now be found in the country. His subjection to them in civil matters has operated in a most deleterious manner upon his enterprise, and consequently upon the commerce of England. A true statement of the sums spent by Zemindars and Planters in the maintenance of men for the defence of their property, and in the necessary bribes to judicial officers, would astound the House of Commons, and show what an enormous tax the shameful neglect of the Indian Government to provide for the peace and law of the country entails upon all classes out of the jurisdiction of the Supreme Court; and yet the Government do nevertheless tax the population enormously and directly for the maintenance of their courts and police, and spend a large portion of the money so obtained on other purposes. The British settler, knowing how his property has suffered from subjection to these courts, struggles against an extension of their jurisdiction to his life and liberty as against his absolute ruin. *That* he knows will be the result, whether the law under which he is harassed be Macaulay's Code or the Mahomedan Law.

An opinion, I am informed, is prevalent in England, that the British subjects object to be placed on an equality with natives, and I can easily guess the reason why such an impression has been fostered by the East

India Company's partisans. It is utterly false. The British subjects would be delighted to see the natives *raised* to an equality with them, and enjoying the benefit of laws and courts as good as their own. Such an amelioration would be of incalculable mutual benefit. But they undoubtedly object to reach that equality with the natives by *degradation* to the unhappy condition of the latter. That cannot and will not benefit either party. To that measure they have quite as great an objection as Her Majesty's ministers would show to a reduction to the condition and salaries of Her Majesty's footmen. And, as I have before stated, the intelligent and thoughtful among the natives do not desire it themselves. Perhaps, among the mass, some slight feeling of selfish gratification might be felt for a moment at the thought that all others were as badly off as themselves; but the better sort hope to have their condition raised to ours, and derive no pleasure—as indeed no rational man can—at the prospect of a measure which will simply have the effect of involving others in their own misfortunes. I have seen it so stated in so many words by more than one distinguished native; and if you will make inquiry among the members of your own Government, you will easily learn that I am justified in making that assertion, if you do not already know it.

If Parliament yield, as I think they are bound in justice to do, to the remonstrances of their fellow countrymen, and refuse to subject them to the courts of the Company in criminal matters, there is no necessity to pass the Penal Code for them. The judges of the Supreme Court are as well acquainted with the criminal law of England as the judges of England,

and can continue to administer it with the same facility as their British brethren. There is no need to impose upon them the necessity of learning a new set of definitions and laws. I am bold enough to think there are very grave objections to Macaulay's Penal Code, and that much difficulty will arise in administering it. But it is certainly easier to learn, and superior to the law now administered by the Criminal Courts of the Company. Pass it, therefore, if you please, at once for these courts, and for the people who are now subject to them ; and hereafter, when you have rendered these courts unobjectionable to British subjects, the code will have been tested, and amended in all probability ; and it may then be made the criminal law of India, if it has been found to be productive of a benefit sufficient to warrant the change.

I may make a few observations upon this code. It certainly is not my intention to enter upon the subject at any great length, or to take all the objections which might be taken to its language, provisions, and definitions, but to confine myself to a few leading remarks. In the first place, it was drawn up by men, not one of whom was a practical or learned lawyer. I do not know in what degree it is the handiwork of the distinguished man whose name it bears ; but he brought to his task neither a practical knowledge of law, nor an acquaintance with India. He is a barrister only in name ; and yet he is the only one of the framers who is a barrister even in name. The others were civilians of the Company's Service—men of ability, no doubt, and who brought to their task a knowledge of India, but marred by their ignorance of English law, and by the peculiar prejudices which attach, as I shall hereafter

endeavour to show, to their whole service, as a body. Of this there is abundant evidence in the code itself.

The Act which appointed this Commission, of which Mr. Macaulay was the President, pointed out the preliminary steps to be taken by them. (3 and 4 William IV., c. 85, sec. 53 and 54.) They began by flatly disobeying the provisions of the Act, and neglecting the necessary steps for informing themselves of the state of things for which they were to legislate. Upon this point, see the evidence of Sir Edward Ryan before the late Parliamentary Committee for Indian Affairs,—one of the richest pieces of satire I ever read, and infinitely more amusing from the apparent unconsciousness, on the part of the witness, of the tremendous revelation he was making :—

"Q. 2,114. Have the provisions of the Act of 1834 effected the objects which were contemplated in 1829? Certainly not. It was the intention of the Legislature, under that Act of Parliament, as is to be gathered from the words of the Act itself, that the Commission should make inquiry into the existing system of the courts, and examine the state of judicature generally in both the Queen's and the Company's Courts: *that after a full examination into the subject it should report the results of their inquiries;* that the Governor-General should direct what inquiries it should make, and what places it should visit for the purpose of making those inquiries. No searching inquiry has been made by that Commission into the state of the existing courts; NOR into the state of the Queen's Courts; NOR have any reports of that nature been made; NOR has the Commission personally visited or inspected the state and condition of ANY of the courts in the interior; BUT IT

DID PROCEED IN 1835, WHEN IT WAS ESTABLISHED, TO THE CONSIDERATION OF A CODE OF CRIMINAL LAW."

I do not know any parallel to this statement. It may be a question whether this disobedience of the Act does not nullify the proceedings of the Commission. Without any information upon the subject, these gentlemen proceed headlong to make laws for a hundred millions of people; the civilians taking the English law, I suppose, from the mouth of Mr. Macaulay, who is no lawyer,—whose very devotion to other pursuits shows that he can have had but a superficial knowledge of the maxims and principles of that "Ladye Law," of whom Coke quaintly says, that she "loveth to lie alone," —and who certainly never had the slightest experience of their practical working; and Mr. Macaulay receiving his information as to the state of the courts from the civilians, who, for the honour of the Government they served, and for their own exoneration from blame, were directly interested in keeping him in the dark as to the true state of things. Is it wonderful that under these circumstances the code should be objectionable? Was not this disobedience of the Act an insult to the Legislature of these realms? Is it unreasonable to expect that the remonstrances of the people so legislated for will receive courteous hearing from Parliament, and a compliance with their just demands?

I have discussed this code with lawyers of long standing and practical experience, and never knew one of them who approved of it in any degree, except in so far as it was *a* code of some sort. We all feel what a boon a good code would be. But when we reflect that after the English Criminal Law Commissioners had made

themselves acquainted with the state of things for which they were to legislate—had taken all those necessary preliminary steps which the Indian Commission neglected to take—the result of their labours was a complete failure, in the opinion of the judges of England, it is not marvellous that the code of the unlearned Indian Commission should be a bad one. When you have got a code in England, it will be time enough to alter it in the slight degree required for India, and to pass it for British subjects, when it can be administered by competent courts. The definitions and principles of the criminal law by which British subjects in India are to be ruled, they as such subjects have, I contend, an indefeasible right to demand should be co-equal and con-similar with those of the law enacted for their countrymen in England. They do not denaturalize themselves by voluntary exile, and do not lose the right of being tried by the laws and courts, for the establishment and integrity of which their forefathers fought and conquered. 4977

Independent of the fact that the enactment of this code is sought to be made the pretence of subjecting British subjects to corrupt courts and incompetent and dependent judges, it is itself unconstitutional in some of its leading principles. It is a code in which the principle of despotic dictation by the Supreme Executive Government to the judicial officers is recognized as a fit principle to be made the supreme law. It is a code in which laws for the suppression of European immigration into India are recognized, re-affirmed, and re-enacted, when they ought to be repealed. It is a code containing a provision which makes the bare possession of a printing press punishable with fine and

imprisonment, even though it be not used,—with fine to the amount of £500, and imprisonment for two years! It is a code which entrusts enormous powers to very young, dependent, and incompetent men, and makes no attempt to improve the courts of India. It is, moreover, full of strange definitions and loose language, to which a thousand objections might be taken. The grand merit of the English criminal law is, and has ever been, that as far as trial is concerned, its code of procedure has been popular and republican. It has been the Legislature, by endless statutes of no small absurdity, and judges, by decisions of marvellous narrowness, that have caused its encumbrance with a heap of rubbish which is not yet half swept away. But this code presents the Indian public with a mockery of trial by jury; with a law despotic in its leaning and principles, and with judges and magistrates who habitually refer to, and act under the actual and immediate control of, the Executive Government,—the magistrates, more especially, on whom the whole preliminary investigation is thrown, and who have the power, of course, of holding to bail, or refusing it, and committing for trial. Moreover, it is a *sine qua non* that the Local Legislature, as at present constituted, out of purely official elements, should not have unlimited power of altering any code which may be presented to them. Such a code as the one now under consideration, altered by such a local legislature, will put the residents in India bound hand and foot into the power of any judges and magistrates who may choose to exercise the almost unlimited powers of oppression which they will possess. And that there are many such I will proceed to show.

I now come to the point to which I most specially

desire to direct your attention,—the class of men who exercise judicial and magisterial functions in India, the civil servants of the East India Company. It is not unusual to say that one intends to speak of them with great respect, and to profess a high respect for them, as a body. I shall make no such avowal, but shall endeavour to show exactly in what points they are deserving of respect and of blame, in my opinion. They are selected from the middle class of English gentry, and are, as a body, just what the average Jones and Thompson of English society would be, under the same circumstances of climate, position, and education. I willingly allow the great excellence of some individuals; but with these we have nothing to do. They are happy accidents. In speaking of a body of men, and considering their fitness for being entrusted with large powers, we must not proceed upon the hypothesis that some may be Pitts or Mansfields; but upon the fact that the great majority must be the sort of average being against whom you brush in the drawing-rooms of the society whence he comes.

If this proposed reform takes place, the vast majority of the men by whom the British subjects in India will be tried will, for many years, be men who entered the service under the old system of appointment by the Court of Directors, and my remarks will chiefly apply to them, though their force will not be materially affected by the alteration to the examination system now introduced.

Let us, for the purpose of illustration, take the case of two brothers, average boys, rather clever than the reverse, and, judging by general rules, consider the probable effect upon their character of their different positions, the one entering upon the career of a barrister

in England, the other of a civilian in India. Mr. Jones, we will say, is blessed with two sons, Jack and Tom, who have both gone fairly through the ordeal of a public school, got one or two prizes, reached the sixth form, written some sweet things in their sister's album, and are considered geniuses by their own family and their own selves, and not particularly stupid by other people. While Jones, *père*, is debating to which University he will send them, an East Indian Director takes a fancy to Tom, and offers him a writership, and he is sent to Haileybury, where we will leave him for the present, to follow Master Jack. He is sent to Oxford, and of course such a very clever fellow is sure (in his own opinion) of a first class, with moderate work. The lists come out, and lo! Jack has only "got a third." For a moment his self-esteem receives a little shock; but he soon recovers. The examiners notoriously had a prejudice against —— College men; and if they had not, by the cruellest luck, set him a paper in the only passage of Aristotle which he had not read carefully, he would have been certain, &c., &c., &c. Mrs. Jones and his sisters believe every word of the excuses, and by the time he has muttoned and beefed himself into the degree of utter barrister, his self-complacency is completely restored; besides, though he did not get a first class, he cannot forget how he distinguished himself at the debating society. Nature meant him for an orator, he feels: only let him get the chance, and the effect he will produce in Queen's Bench will be something astonishing. He does get it at last, through a benevolent attorney, who fancies he sees a resemblance in Jones to his dead son, and determines to give him a chance of showing his mettle. With what pride Jones

eyes his brief! How he will show cause against that rule! How he will pound, triturate, and utterly demolish the other side! His leader seems to entertain no great hopes, but his leader clearly has never got a right hold of the point. *He*, the great Jones, will have to do it all himself. So much the better; in about five years a silk gown; in ten, if the right ministry are in power, Mr. Attorney! Down he goes on the eventful morning, with a most carefully prepared speech; points duly marshalled, like steps on a ladder, a tremendous peroration, and a secret hope that the judges will snub him, in order that he may "come out strong." Need I say that he will arrange his facts and arguments with the lucid force of Lyndhurst, and descant upon them with the nervous eloquence of Erskine?

At last the moment arrives. He gets up, and says very glibly, "My Lords, I also have the honour to appear in this case with my learned friend," when a sudden doubt suggests itself as to whether he had not better begin with his third point. He hardly attempts it, before he finds himself in an inextricable confusion. The oddest sensation ensues. Sparks seem to flash from his eyes; something rises up and bobs against his uvula, choking his voice; the judges seem all running into one; Lord Campbell has suddenly laid aside the grave decorum of his manner, and is winking at him with indecent hilarity; and clear amid all the confusion he sees, rife with malicious fun, the detested face of his stupid cousin Robinson—that Robinson whose waltzing and hideous boots he has so often ridiculed, in his neat way, to Miss Charming—that Robinson who never wrote album verses in his life, and yet has, in this very case, acquitted himself fairly on the other side, as he,

Jones, cannot but allow. Now at this juncture, instead of snubbing him, one of the judges kindly tries to give him a help; he cannot understand or catch the suggestion; it is the last feather on his burden; he sits down abruptly, with burning cheeks and a heavy heart. He sneaks home with suicidal intentions; but his spirits improve gradually after dinner with each glass of port. He begins to reflect and take a new measure of himself. He perceives that he made a little mistake in thinking he was a huge piece of ordnance, whose weighty metal and loud bang would astonish the world the moment it was discharged, and that it will take long time and labour to make even a pocket pistol of him. He takes a more favourable and respectful view of Robinson; he dare not, cannot, quiz him any more. However, if he has pluck, luck, and (ah! most necessary of all) a friendly attorney, he will try again, and may in time get his silk gown. Such is the rude lesson through which a professional man learns modesty and charity. Many a fine intellect and sensitive nature have shrunk from the horrors of a second attempt; many more have never got the chance after the first dismal defeat. But the lesson, stern and cruel though it often is, has an all-pervading and beneficial effect. Jack Jones, after that miserable day, is a wiser and better man, and fitter to judge of his fellow men.

Now turn to the other picture, and follow the civilian's career. He is "highly distinguished" at Haileybury, and after hearing a few eloquent and touching remarks upon duty from the good Sir James Hogg, he sails, amid sororial lamentations and maternal blessings, for Calcutta. He gets an inkling into his good fate upon the voyage. He hears congratulations on his

luck from the old military men who are returning from furlough, and notes the semi-divine assumption of the old civilians; and probably one or two of the more knowing girls make a dead set at him. Once at Calcutta, his progress in conceit is exceedingly rapid. He goes to stay with a married relation, who is high in the service. The house is a palace; the splendour of the living, the number of the servants, the style of furniture, present a rather striking contrast to the paternal mansion in Bloomsbury Square. This, then, will be his lot too. Every morning as soon as his eyes open, in answer to the gentle call of his bearer, that polished individual makes the most graceful and lowly prostrations, and salutes him by the loftiest appellations. Two of them wipe and dress him. Whenever he eats, a servant attends to his sole wants. The tradesman is only too happy to give him unlimited credit. Does he want money? Who so happy as the money-lender to oblige him with any amount? The lessons taught by the adulation of the native and the shopkeeper are enforced by the demeanour of his own pretty countrywomen. Beauty bows before him; the brightest eyes light up at his approach. Emily and Ann seem to have made a bet as to who shall produce him the greatest number of sweet smiles in a given time. For, alive, his value ranges, as soon as he is employed, from about £500 to £10,000 per annum; and when he is bricked up in his grave (to give the worms a fair start against the jackals, the wealthy are bricked up in India), his miraculous carcase is still pecuniarily productive to his widow. "Three hundred a year, my dears, dead or alive, and pensions to the children!" is the remark of the sagacious matron to her daughters, when enforcing the necessity

of catching a civilian; "to say nothing of the position." He stays about a year in Calcutta, snatching just time enough from dissipation to enable him to pass through a very easy examination in the native languages, and he is then sent up into one of the interior districts, to officiate as assistant to the magistrate—a gentleman who presides sole arbiter over from one to three millions of men. The young civilian, who from the date of his appointment has been drawing from £300 to £360, now begins to draw from £480 to £600 a year, according to the number of examinations which he has passed, and proceeds to deal out "justice" to an enormous population, without any sort of judicial training, but with no small opinion of himself and his powers. His age, it will be remembered, is twenty-two. I shall copy a short description of his *modus operandi* from the pen of the late Mr. Wilson, for upwards of twenty-five years a resident in Tirhoot, a man profoundly versed in Oriental character and languages, and of the highest character:—

"The embryo magistrate instals himself in a dwelling-house, the property of the principal landholder in the vicinity; a nominal rent is, for appearance sake, negotiated, while double the amount is usually spent in repairs and improvements. The landlord impresses upon his tenantry the obligations the authorities are under to him, and he is enabled to give them an extra squeeze. A room in the building is set aside as a court; all the procedure is in writing; a nephew of the magistrate's confidential native functionary presides as confidant and mentor to the youthful Englishman; several other writers, a few attendants, porters, and policemen arrayed in blue turbans and badges, describe this official

retinue; and with all the lighter charges and petitions of the magistrate's file handed to him for adjudication, the young man commences his career, taking lessons on the wrongs of indigent men, much in the same way as Majendie experimented upon living animals.

"The language of the court is not the dialect of the people. The evidence, therefore, of the witnesses, the accuser, and the accused, must be taken in writing by a native examiner; and the whole proofs of the most trivial assault, or the foulest murder, are carefully arranged by a man who receives ten shillings a month! A *douceur* modifies the evidence materially. When all is ready, the papers are read aloud by the head native functionary, while the young magistrate is drawing a horse or a ship on some blotting paper, or hacking the table with his penknife. At the conclusion, the bench intimates to his sable mentor to give a 'suitable order.'

"But the decisions here pronounced do not rest upon the affidavit of witnesses present, so much as upon the report and details of an investigating officer, who possesses the most anomalous power in the interior of the province. At the distance of some twenty or thirty miles from each other, small police stations are distributed; these are occupied by a few paid and unpaid policemen, the latter being rewarded for their zeal by a levy upon the inhabitants, in which the former share. This posse is commanded by a sergeant called a darogah, a corporal called a jamadar, and a clerk; for it very often happens that, although engaged in the most extensive paper correspondence, the two former cannot write. Under these officers, again, are placed a body of village watchmen, said to amount in Bengal, in round numbers, to no less than 200,000 men, and supported

by a local tax upon all huts. These guardians of the night are thieves by profession, and thieves by hereditary descent.

"The duty of the sergeant is to inquire into all unlawful causes of offence, take down evidence, and report his own convictions on the case to his superior, the magistrate, who in most cases decides accordingly, as he cannot help relying on the accuracy of a man writing from the spot; and thus the lives and fortunes of the people depend upon the good will of a set of the most unmitigated scoundrels on earth."*

Under this advantageous training, the young civilian speedily becomes a magistrate, and a good deal more than a magistrate, as we understand it in England. He is not simply a judicial officer, but a thief-catcher, police superintendent, accuser and magistrate in one. A conviction by him, in his judicial capacity, is a compliment to himself as thief-catcher and policeman. Is it strange that he should have, therefore, a strong leaning to severity? In fact, as there is no sort of division of labour in the service, the education above described is supposed to fit a civilian to be thief-catcher, police superintendent, accuser, magistrate, judge, an intricate tax collector, a commissioner of revenue (with nearly indescribable powers), a postmaster, an opium agent, a salt salesman, an exciseman, a secretary to Government, a diplomatist, a finance minister, a professor of English law, a director of public instruction, and an ædile, or commissioner of sewers and public works, all in turn; but if he is remarkably idle, or remarkably foolish, his elevation to

* "A Letter to John Bright, Esq., M.P., on the India Question." By James Wilson, Esq., Twenty-five Years Resident in Bengal. London: Edward Stanford, 6, Charing Cross.

the bench becomes a certainty, as he is considered unfit to be employed in what are deemed the more important branches of the public service. You will think I exaggerate; but I am stating a truth as notorious in India as that the earth goes round the sun. I know an instance in which an exhibition of remarkable folly on the part of his senior gained a friend and connection of my own an unexpected promotion. That senior, for his folly, was immediately made a judge, because he could not, in the opinion of the authorities, be intrusted with revenue matters, and my friend got the post his senior would have had, if no doubt had been entertained of his sanity. Every man, as he attains sufficient standing, can be made a judge; in fact, he is only *not* made a judge if he has shown too much ability to be spared from the other branches of the service, or if he pushes his interest with a view to other employment. This fact is broadly stated by Mr. George Campbell, who is, nevertheless, a thorough-going partisan and admirer of his own service:—

"It seems to be considered, that if at this time of life a man is fit for anything at all, he is fit for a judge: *and if he is fit for nothing, make him a judge, and get rid of him:* for once in that office, he has no *claim* to farther promotion by mere seniority alone." This being the case, the judicial is naturally the despised branch of the service, and nearly all the more able and ambitious servants of the Company seek employment either in the revenue or secretarial or financial departments, as through these paths only are the highest dignities, such as lieutenant-governorships and memberships of Council, likely to be attained. I am well aware that the present Lieutenant-Governor of the North-Western Provinces

was raised to that dignity from the Sudder Bench; but he was not so promoted from any abilities displayed as a judge, but from those shown in other employments, and from strong interest; in fact, he was a very bad judge in some respects, as the *Friend of India* has lately confessed, though, of course, a man of his ability and industry was vastly superior to the majority of his service. And after this confession on the part of the civilians' own organ, of the judicial unfitness of the Sudder Bench generally, and especially of this undoubtedly able man, and after Mr. G. Campbell's statement, it may well be conceived that the average judge is a very queer animal indeed.

I think I might almost leave my case as to the judicial unfitness of the civil servants where it now stands, and ask any man of common sense whether he wonders much at the dislike shown by his countrymen to the prospect of entire subjection to such courts, and such officers, and such a police? But their greatest disqualifications for the judicial office have not yet been hinted at.

It cannot be denied that the judicial training of the civilian is totally deficient in every requisite for the improvement of his natural capacity. Let any kind of fault be proved against him, no notice is taken of it, or if any is taken, it is generally in the nature of a kick up-stairs. Mr. Wilson, just quoted, cites an instance: "A judge, condemned by the Court of Directors for open fraud in the performance of his judicial duty, is deprived of an appointment yielding £2,300, and is installed in another worth £6,000 per annum," and adds:—"This one instance is given, where twenty more might be added." This is true when the delinquency is not of a

nature to offend the Government; but if the judge decides against the Government, he is nearly sure to feel its displeasure sooner or later. He has entered into a covenant with them, of the precise nature of which we are not aware; but that, and the fact of his promotion depending not on his own merits, but on the good-will of the Executive Government, render him totally subservient. The Government do not hesitate to tell the judges how they are to decide in cases of which the decision affects its own interests, as I shall presently show. This evil spreads through all the subordinate judicial officers. The latter obey the slightest hint of the magistrate, whom they regard as the exponent of the wishes of those in power. Let him be known to have a prejudice against a given zemindar, or planter, and the obnoxious individual is ruined. The slightest expression of his bias—an indirect hint even—and the man indicated never gains his case. Assistant magistrates, deputy magistrates, cazees, pundits, amlah, nazir, sudder ameens, moonsiffs, darogahs, police, all are banded against him. Not only does he suffer defeat in every case which he himself brings into Court, but endless accusations are trumped up against him, and supported by perjury and forgery. The darogah, or serjeant, is only too happy to gain credit for zeal by bringing accusations forward; the magistrate begins to think him a very excellent officer, and himself a very energetic and successful detector of abuses. The darogah sees the pleasure his charges give, and continues producing new ones. The magistrate can hardly help believing some of them, even if the majority are found to be false; and the man, against whom charges are weekly or monthly preferred, is at last believed to

be an accomplished villain; though perhaps all these accusations had their origin in some hasty word, or heedlessly displayed dislike of the magistrate himself. If he leaves the district, he probably tells his successor, "You had better keep your eye on So-and-So;" and thus the successor too imbibes a prejudice against a man who is very likely to be entirely innocent. The result is invariably that the man is either ruined, or driven to hold his own by the worst means: by the strong hand, by extensive bribery of the magistrates' underlings, or fraud, perjury, and forgery. If the latter be the case, the chances are that by the time he has become a thoroughly accomplished villain, and has got all the understrappers in his pay, and a well organized band of perjurers, he becomes a great favourite with the next magistrate, who now finds him always to be in the right, looks upon him as an injured individual, who was shamefully oppressed by his predecessor, finds every case in his favour, and the man in his turn rides rough shod over all his neighbours, and indemnifies himself for his previous unjust losses by present unjust gains. Conceive the effect on the planter when the magistrate has a spite against him!

I have said that the best intentioned magistrates cannot do their work, and that they have no incentive to work. The first assertion does not admit of argument; a glance at the extent of their jurisdiction, and a consideration of the badness of their police (of which I am informed a late Report by Mr. Halliday, which I have not seen, is as demonstrative as the most ardent Indian reformer could wish), will convince you of its truth. As to the second, it is to be remembered that, except in very rare instances, energy is not rewarded. The civilian

is sure of his promotion, whether capable or incapable, whether idle or industrious. In those rare cases where an extraordinary promotion takes place, it will be found that the more important element of interest, either in India or at home, was not wanting in the candidate; at least, I cannot call to mind an instance to the contrary. All that the Government require is, that a certain number of cases should be decided in the month. When, therefore, the officer finds his tale growing short, he rattles through his remanets in a helter-skelter fashion, till he gets his decisions up to the required number. This is, I believe, absolutely necessary under the present system; and it is easy to conceive that an indulgence in this rapid mode of decision becomes habitual, the more readily as it generally brings the magistrate into favour with his superiors, and gains him credit for vigour and diligence; while, on the other hand, a conscientious representation of abuses, and schemes for their reform, as frequently bring the official into disgrace; he is ordered not to be troublesome and meddling, but to do as others do. Moreover, the climate must not be left out of consideration; that of Bengal is relaxing to an astonishing degree; the most vigorous are not free from its irritating and weakening effect; the majority alternate between a savage irritation and effete listlessness. And yet to discharge the duties of a magistrate properly, a man must be a good horseman, and able "to stand the sun," in addition to his other qualifications.

Besides the obvious tendency to severity, which the possession of judicial and executive functions by one and the same individual must superinduce in him, this double capacity has another most injurious effect. It precludes the possibility of obtaining redress against his wrong

doing; for if convicted of evil practices in his executive department, he turns round and shelters himself as a judicial officer under Act 18 of 1850, commonly called "The Impunity Act." This was one of the three "Black Acts," which the European residents unanimously opposed in 1849, and the only one of them which was passed. It was expressly passed to give the civil servants more impunity than Lord Wensleydale had decided they were entitled to under the statute 23 Geo. III., c. 70, in the well known case of *Calder* v. *Halkett*. It was an Act contrary to the intention of the Legislature when it passed the statute of George III. It was an Act contrary to the principles of the Privy Council's judgment, and it was laughable for the absurdity of its phraseology; but nevertheless it was passed, and seems to have the effect of preserving the magistrates from the consequences of punishment in case of mis-behaviour. I will, as a specimen of the manner in which some of these gentry behave, quote the case of a Mr. Thomas, the collector and magistrate of Coimbatore, in Madras. The last few mails have brought us news of the final decision of this case.

Bhawanny Lallah is a wealthy merchant, trading between Coimbatore and Madras. Mr. Thomas is collector and magistrate of the former place, but in September, 1854, was residing at Ootacamund, distant seventy to eighty miles from Coimbatore. On the 20th September, he sent a note—not a summons—to Bhawanny Lallah, ordering him to appear before him at Ootacamund, the object of the requisition not being stated. Bhawanny Lallah very naturally did not go. On the 23d December Mr. Thomas had him taken into custody, dragged backwards from prison to his cutcherry day after day, until

he was pleased to sentence him—Heaven knows what for (for there was no charge)—upon the 6th January, to find two sureties in 100 rupees each. Then Mr. Thomas pretended that this wealthy trader could not find such sureties, or at any rate he refused to accept them, and the man was further imprisoned for another week. Subsequently, Bhawanny Lallah brought his action in the Supreme Court at Madras, and Sir C. Rawlinson delivered judgment in his favour, from which judgment I extract the following sentences :—

Sir C. Rawlinson, C. J. "*I cannot find in my notes that any charge whatever was made against this plaintiff; nor does all alleged against him in the highly-coloured statement called 'a sentence,' amount to any charge. In fact, I cannot make anything at all out of this piece of paper; for I cannot look upon it as a record at all—merely a sort of memorandum.*"

This "sentence," or "record," or "piece of paper," is the official record of what passed with regard to Bhawanny Lallah. It described the charge against him, and the sentence upon him, in the language of an advocate, and not of a judge; but one very remarkable fact is worth noting. When Bhawanny Lallah brought his action in the Supreme Court, he applied for a copy of his "sentence" to Mr. Thomas: one was furnished to him. At the trial this was produced, and what purported to be a copy of the same sentence, was put in upon behalf of the defendant Thomas: *there was great discrepancy between the copies, and one was much longer than the other!* Upon which the Chief Justice thus commented :—

"*I have here two papers, both signed by the defendant, and both (singular to say) purporting to be the record*

of the case—both dated on the same day; but their contents are very dissimilar. No explanation is given of this, though there has been ample time for such explanation, for the case has been the reverse of hurried on. Yet the two papers widely differ. True, I can make little of either—both are so confused and irregular. * * * * * * What are the facts, the *undisputed facts* of the case? On the 23rd December the plaintiff was taken into custody, and subsequently was taken before the defendant, by whose orders he was day after day dragged backwards and forwards from the prison to the cutcherry, and from the cutcherry to the prison, *being confined in the prison* each night. *Nothing would have been easier than to disprove this, had it been untrue.* At length, *after many days of this dragging about in custody, the defendant proposes to hold an inquiry into something which took place in his absence, more than two months previously. There had been other magistrates there during these two months, but there had been no inquiry, no charge, nothing done till the defendant returns as described.* On the 6th of January the plaintiff was sentenced to find two sureties in 100 rupees each, or to go to jail: *and on that day he was thrown into jail. The question then comes, what took place before he was thrown into jail?* The plaintiff swears he had friends, respectable and wealthy men, there, whom he tendered as his securities, *and there is also other evidence of the fact.* Coimbatore is a large place, and has many respectable and wealthy inhabitants; *and can the Court then be expected to believe the suggestion for the defence, that the plaintiff, who is a very rich and influential man, could not get two securities for* 100 *rupees each?* It is also suggested that the plaintiff

flatly refused to give security. It does not become necessary to inquire into this, *because the magistrate had no jurisdiction to make him do so.*"

This is an abbreviated account of a case tried in Madras within the last few months. The report is taken from the Madras papers, and the very words of Sir C. Rawlinson's judgment are given; the parts omitted do not in any way affect these passages. The Chief Justice upon this occasion found a verdict for the plaintiff, with 1,000 rupees damages. This was subsequently upset by the same judge and his colleague, upon a point of law; both judges, however, in their judgment, intimating their opinion that Mr. Thomas had been guilty of "*mala praxis.*" It is not for me to question the legality of this decision; but it certainly seems greatly to exceed the principles laid down in *Calder* v. *Halkett*, and must therefore, I presume, rest upon the Act 18 of 1850, before noticed, and if so, proves the impropriety of that Act. For it must be remembered, that both the judges find a verdict for the plaintiff on the merits; and we may deduce from the first judgment of Sir C. Rawlinson the following facts:—

1. That Mr. Thomas ordered Bhawanny Lallah to appear before him, seventy miles off, without any reason or proper forms.

2. That he kept him in prison without any charge a fortnight.

3. That he then, for no offence and upon no charge, ordered him to find bail.

4. That he refused his bail, and imprisoned him for a further term.

Sir, this is *torture!* It would be bad enough in England, but you have no conception of what it is in

India. A respectable native would abandon a very large amount of money rather than be obliged to appear in person in a civil court—nearly his whole fortune, I verily believe, rather than go into jail, or even appear in a criminal court. He loses caste, and honour, and feels it much as you would feel being kicked out of a gentleman's drawing-room. To regain the position he has lost costs him an immense sum of money, if he be a man of position and wealth, in religious ceremonies, feasts, and fees to the priests of his caste. The police subject him to every indignity, spitting on him, flinging dirt on him, sending him food which he cannot eat, or threatening only to send him his food by the hands of men whose touch is pollution, and thus starving him; and force from him large sums of money to purchase exemption from their cruelty; even if they do not proceed to actual torture by any given instrument named in the late Report. I know nothing of Madras personally, but unless the police there are very different from what they are in Bengal, I have no hesitation in saying that this iniquitous proceeding of the magistrate probably cost Bhawanny Lallah £1,000, at least, from beginning to end. Yet his oppressor goes unpunished.

Now, observe the difference between this case and that of an English magistrate acting in a similar way. It may be that this magistrate is exonerated from punishment upon principles similar to those which wisely hold our judicial officers free from the consequences of their judicial acts, though I confess I doubt it. *But*, if an English magistrate acted thus, the force of public opinion would drive him at once from the bench. Mr. Thomas, on the contrary, will be considered a martyr by the Local Government, and will perhaps be specially

favoured, but most certainly will suffer no loss of station or one step of promotion. This gentleman, by the way, was one of those whose veracity appeared in a somewhat unfavourable light in the Torture Report. He denied the existence of torture, and yet it appeared in the tables attached to the Report that he had convicted two men for the practice himself. To judge from Sir C. Rawlinson's judgment, he does not seem to have improved in his conceptions of truth.

Think what the effect upon the poor natives must be of letting such instances of misconduct go unpunished; they never dare complain of any oppression: and let me ask again, if it is surprising that Englishmen object to being tried for their lives by such men, and desire that the natives should have the benefits of their courts, instead of themselves being subjected to the Company's Courts? And yet Mr. Thomas's sins are mere peccadilloes in comparison with those of some of his brethren. I cannot refrain here from quoting a paragraph from the *Madras Athenæum* on this subject:—

"It is not the bare acting without jurisdiction from which the natives so much require protection, as all those irregularities, eccentricities, oppressions, illegalities, which may, and often do, occur during a trial and investigation, and which are simply '*pessima praxis*'!"

Surely the British subjects require this too!

Are you acquainted with the case of Mr. Solano, and the charges he has brought against a magistrate named Swinton? The case has been before Parliament, before the Government of India, before the Court of Directors, and has been noticed by one, at least, of the English papers. But (supposing that Mr. Solano was right in his allegations) his wrongs have received no redress, and

the last news from India reports that he has been all but murdered. It is impossible to deny that the attack on him is directly traceable to the ill-will of the magistrate. The case is one of such importance, that I shall make no apology for quoting an article upon the subject from the leading journal of Calcutta, and extracts from the case which Mr. Solano laid before the Government of India. Mr. Solano is a foreigner of substance, who has been for many years a planter and landholder in the district of Shahabad. Mr. Swinton chose to believe that Mr. Solano was in the habit of oppressing his tenantry, and consequently commenced what, if Mr. Solano's statements be true, was a system of persecution and denial of justice against him. It is impossible to doubt the truth of a large portion of Mr. Solano's statements, because he states facts which were matters of judicial record, and the falsity of which must have been so easy of proof, that no sane man would have ventured on such assertions if false. He describes a long and most vexatious proceeding, the adverse decisions of the magistrates, and the reversal by the judge of those decisions. We know well in India that civil servants have frequently been guilty of such conduct, and the proceedings of the Government in this case lead almost irresistibly to the belief, that Mr. Swinton is not able to exculpate himself from the charges made against him; for when Mr. Solano applied to Government to let him see Mr. Swinton's reply, *the Government refused the request.* And yet, Sir, since you have been at the Board of Control the Home Government promised to furnish a copy of Mr. Swinton's reply, but has never fulfilled the promise. Is it because they dare not? A gross wrong has thus been done to one of these two gentlemen.

Either Mr. Swinton is guilty, or he is not guilty. If the former be the case, those in power, who kept him in office after they had proof of his wrong doing, are directly chargeable with the moral guilt of the murderous attack upon his victim; if the latter, they have behaved most cruelly to Mr. Swinton, in permitting him to lie for years under the stigma of being a shameful and reckless oppressor. The evil results of such a policy are not confined to this particular case; they spread through the whole country, and every honourable and upright member of the service suffers from the suppression of inquiry into such charges. Suppose a parallel case in England. Suppose that a charge of corruption or oppression was brought in this circumstantial manner against a magistrate or a judge of England. Would the public be satisfied—would his learned brethren be satisfied—if Sir George Grey rose in the House, and said that he had received an explanation from the accused personage which he deemed satisfactory, and that therefore the Ministry intended to take no further steps in the matter, but that he certainly did not intend to publish that explanation? Would not the public be still more suspicious if the accused man happened to be the Home Secretary's own nephew? Yet this is an exactly parallel case. I defy anybody to say that it is not a fair analogy. Mr. Swinton is a very near connexion of Sir J. W. Hogg's, and has, I believe, other interest to back him. I know nothing of this case, save from the published documents. It may very likely be true that Mr. Solano has at some period resorted to illegal proceedings. There is hardly a Mofussil man in the oldest settlements of India, who is not driven, by the inefficiency of the courts and the police, to hold his own at times by illegal means.

But Mr. Solano is not only a planter, but a zemindar and landowner. In such cases oppression on any large scale is very rare, for the best of all reasons; it militates against his own pecuniary interest. It is very possible that Mr. Solano, as soon as he had discovered the uselessness of appealing to the judicial authorities, determined to protect his property by the strong hand, and enforced his legal claims by illegal means. But the blame of such not uncommon proceedings attaches to the Government, who provide no effectual means of preserving order, or enforcing just claims in legal ways. And surely a man is not likely to be cured of evil practices by finding the law courts shut against him, and the police, who obey every hint of their official superior, turned into so many enemies against him, from that superior's personal ill-will and prejudice. It requires no reflection to suppose that a man, who has invested his whole fortune in the country, will prefer holding his own by bribery, fraud, and violence, to certain and imminent ruin. I subjoin the article, and extracts from Mr. Solano's petition to the Bengal Government, taken from the *Calcutta Englishman*, under date the 12th and 24th May, 1855.

"The *Press* has noticed the case of Mr. Solano, and the *Friend* insinuates, as if it was a fault, that the *Press* must have been moved by the legal adviser of that gentleman. It indeed does not name him, but it points at him. Now, let us observe that Mr. Solano printed his case many months ago, with the view to give it a more or less extended circulation; and the notice which it has attracted in England is owing, we believe, entirely to its importance. This so-called Case is a miscellany of cases, furnishing individually and collectively a striking illustration of the extent to which the abuse of office and maladministration of justice may be carried with impunity by an East India Company's civilian. In this point of view it illustrates the spirit of the authorities here, in dealing with the best grounded complaints against any of that class of persons. The case has also been before the Court

of Directors, which has supported the nephew of Sir J. W. Hogg and the local Government. The part taken by these authorities gives the case a public, we may say a political, importance.

"We shall have occasion hereafter to advert more particularly to the conduct of the Government; at present we shall deal only with that of Mr. Swinton. One of Mr. Solano's complaints against him was, that practically he shut him and his servants out from redress, by the manner in which he dealt with their complaints when brought before him. We will give an illustration. One of his servants, who was in charge of some of his cultivated lands, had to drive off a herd of cattle which was trespassing upon them, and was beaten and threatened by the owners of the cattle. The man complained to Mr. Swinton, who referred the case to the Joint Magistrate, and in the order of reference, cast on Mr. Solano the following imputation:—'As on the part of Mr. Solano great oppression is practised, you will inquire into the matter and pass proper orders.' To appreciate the malignity of this remark, it must be observed that it does not stand alone, it was not a momentary aberration from proper judicial decorum, but the invariable treatment which Mr. Solano and his servants received from Mr. Swinton, and conduct of this kind in another case formed the matter of an express charge against Mr. Swinton. Any magistrate not belonging to the privileged service, acting in such a manner, would, we will venture to say, be visited with the highest displeasure of this Government, if not instant dismissal. What would be said of a magistrate in Calcutta if he took the occasion of a complaint on the part of a banian to vilify the firm that employed him, and that, apparently, with no object but to prejudice the banian's complaint when it should come under investigation? Such would be a parallel to the conduct of Mr. Swinton in this instance. And what probably would be the conduct of the banian in the case supposed, appears also to have been that of Mr. Solano's servant. He declined to prosecute his complaint before such a prejudiced tribunal, and who could blame him? But, therefore, what shall we say of Mr. Swinton?

"Our readers will see that the case described grew out of cattle trespass. It is not surprising that cattle trespass should prevail in any district under such a man. The manner in which Mr. Swinton dealt with this subject forms one of many very strong grounds of complaint against him. Pitching his tent, in one of his cold weather tours, near Mr. Solano's residence, he invited, according to Mr. Solano's pamphlet, complaints against him. As might be expected on such an invitation, twenty or thirty complaints were brought to him. Even Mr. Swinton

could entertain only two of them, and they were complaints that Mr. Solano had distrained cattle trespassing, and in one of the cases taken a fine of five rupees. A Punchayet of respectable zemindars had investigated the case, and fixed that fine. Giving no weight to their decision, Mr. Swinton fined Mr. Solano a hundred rupees in each case, and required from him a security bond in two thousand rupees not to oppress any ryots in future. Here, then, we plainly see what is Mr. Swinton's idea of oppression. Mr. Solano's servant complains of cattle trespass, and of being beaten in driving cattle off his master's cultivated fields; Mr. Swinton takes occasion of that complaint to brand Mr. Solano as an oppressor of the people. Mr. Solano is called before him in consequence of his servants having distrained cattle trespassing, and Mr. Swinton fines him heavily, and binds him over not to oppress the people. Obviously the distraining of the cattle is here the oppression in Mr. Swinton's opinion, and his decision in these cases, practically and logically, amounted to a license for all the owners of all the cattle in the country to feed their cattle on Mr. Solano's crops.

"Outrageous as was the imposition of fines on Mr. Solano himself, and the extortion of a security bond from him, it was but a small part of Mr. Swinton's misrule on that one occasion. On the same day (we quote Mr. Solano's petition to Government) on which the security bond was taken from Mr. Solano, Mr. Swinton summoned Mr. Solano's dewan, a man upwards of seventy years of age, and two others of his principal native servants, the naib and jemadar, and required them to give similar security bonds not to oppress the ryots. And besides taking security from servants, Mr. Swinton summoned from Arrah, the civil station thirty miles off, Mr. Solano's law mooktear, and extorted a security bond from him. We cannot better express our opinion of these proceedings than in the words with which Mr. Solano concludes his representation of this conduct to Lord Dalhousie, as Governor of Bengal:—

"'Your petitioner submits that this conduct of Mr. Swinton, in relation to these several security bonds, was as outrageously arbitrary and unreasonable as it was illegal. Though the bonds were cancelled on appeal, to your petitioner the proceeding has produced consequences almost beyond the reach of legal redress. It occasioned alarm and terror throughout your petitioner's establishment; in consequence of it some of your petitioner's most valuable servants immediately abandoned your petitioner's service and their native villages, leaving their accounts unadjusted, and causing no small amount of confusion and disorder in the affairs of your petitioner; and your petitioner has not been able to supply their places. The collection of rents has conse-

quently fallen into arrears, and cattle trespass on your petitioner's indigo cultivation has been committed to a ruinous extent, unchecked and unpunished.' "

Extracts from Mr. Solano's Statement.

" In May, 1853, the magistrate, Mr. Swinton, without a written complaint before him, which is generally considered necessary under Reg. 9, 1807, §§ 3, 6, to initiate his jurisdiction in such a case, recorded a charge in which three persons (Jowahir Ram, Tanto, a police burkundaz, and Keolapatę and Rizun Sing) were complainants, of rescue of cattle by Bhowani Rai and others, and in the same record or proceeding Mr. Swinton ordered that depositions should be taken. Depositions were taken, and they exhibited the usual amount of exaggerations, such as cutting and wounding, and at the bottom of the whole lay another more serious charge, viz., that the cattle rescued had been stolen seven months before from the two prosecutors who claimed the cattle, and also stated that they had at the time reported and complained of the theft at the thannah of Arwell. This proved to be false, for the magistrate of Behar, in which Zillah Arwell is situated, reported to the magistrate of Shahabad that no charge of theft of cattle had been made by the complainants at the thannah mentioned : the case was thus reduced again simply to a complaint of assaulting the burkundaz and rescuing cattle from him.

" The case disclosed on the depositions was, that as the two prosecutors were passing by the village of Dunwar, they saw their cattle (six head) depasturing among others, which they learned from the herdsman belonged to Bhowani Rai, and they went and informed Jowahir, the police burkundaz, who, with three police chowkidars, accompanied them back, and they were taking away their own cattle, when the rescue complained of took place. Upwards of a hundred villagers, it was said, assisted in the rescue, and some of the witnesses alleged that Mr. Solano encouraged and directed the rescue from the verandah of his factory bungalow of Dunwar ; but they did not know Mr. Solano personally. They did not agree in their statements; and the three police chowkidars, who may be considered as the principal witnesses, said that no sahib was present. The depositions of seven persons, including the prosecutors, having been taken, and the case for the prosecution closed, Mr. Swinton made it over to his assistant Mr. Richardson.

" It should here be noted, that three or four days before this case came on, Mr. Swinton had received a copy of the charges which Mr. Solano had preferred to the Government of Bengal against him : and, as

can be distinctly proved, displayed in his conduct animosity when Mr. Solano's name was mentioned. Mr. Solano heard of the case going on, and the information he received alarmed him and led to Mr. Norris's letter to Government of the 2nd June being written.

"Before noticing the next step in these proceedings, it will be proper to premise for information, that there is a practice in the Mofussil, warranted no doubt by the regulations, of employing darogahs (native superintendents of police) to inquire into facts alleged to have happened within their local districts, and report the result to the magistrate. The darogah of Dhungaeen was directed to investigate and report on the alleged transaction of rescue of cattle ; he did report, and his report, which was based on the evidence of thirty witnesses of respectability, in no way involved Mr. Solano as a party concerned. This report did not satisfy the assistant magistrate, Mr. Richardson ; he ordered another darogah, him of Ekwaree, to make a fresh investigation, which was made, and a report upon it, according to which Mr. Solano was *not* present or concerned at the said rescue of cattle ; and this report was founded on the evidence of twenty-four witnesses, whose depositions were forwarded with it ; but on the evening of the same day this worthy sent a letter varying, on no intelligible grounds, his report of the same morning; the letter was sent express and reached first, and on hearing it read and without waiting for the formal report, viz., on the 14th June, Mr. Richardson issued a summons against Mr. Solano, which gives a new phase to the case, and now we have the case of *Jowahir* v. *Solano*. The summons purported to be on the complaint of the police burkundaz Jowahir, and required Mr. Solano to appear on the 30th June, to answer a charge of having 'caused him' (Jowahir) 'to be forcibly resisted when in discharge of his duty, whereby he was wounded and beaten,' he, 'Solano, being personally present aiding and abetting.'

"The tenor of this summons naturally under the circumstances struck terror in Mr. Solano's mind and suspicion of Mr. Swinton ; it was false to his knowledge, and his friends could plainly see in it the marks of concoction: it is hardly necessary to refer to them, but this may be mentioned, viz., that Jowahir, the complainant, had been but lately stationed by Mr. Swinton in a police chowkey between two of Mr. Solano's factories, and this trumped up case took place at a time when Mr. Swinton was most inimical to Mr. Solano, having been called upon by Government to answer the charges preferred by the latter against him.

"On the day appointed, viz., 30th June, Mr. Solano sent one of his

assistants (the one in charge of the Dunwar factory, near which place the rescue was said to have happened) to represent him, and he subsequently made various endeavours to be excused from a personal appearance, on the *bona fide* ground of ill-health occasioning an inability at that time to travel; and on legal grounds, also, he appealed for this purpose to the Sessions Judge and Nizamut Adawlut, without success, however, on the ground that he was *personally* charged with the offence in question; and at last, on the 1st of October, he appeared before the magistrate. His answer to the charge was a total denial: it was true he has a factory at Dunwar, near where the rescue was alleged to have happened, but it is in charge of an assistant; his own sudder factory at Bullea, where he resides, is several miles off, and he was not at the Dunwar factory on the day of the rescue, and had not been there for a considerable time. He stated then, and it was repeatedly stated afterwards, and is unquestionably the fact, that neither can the factory bungalow be seen from the road, nor the road from it; that the distance between them is upwards of 1,400 feet, and the vats and all the factory buildings also are between; it was therefore impossible that Mr. Solano or any one else should have directed and halloed on the rescue, standing, as alleged, in the verandah of the bungalow. Mr. Solano also urged the extreme improbability that he would compromise himself personally in a matter so petty, and in which his factory interests were in no way concerned; and he also appealed in refutation of the charge to the two regular reports of the two darogahs.

"Having put in his answer to the charge, the trial was adjourned to the 17th of October, on which day Mr. Solano attended, and his witnesses, sixteen in number, were also present: of these sixteen, two were Europeans, and the rest respectable landholders, and two police chowkidars, and Mr. Solano was accompanied by Mr. Norris the pleader. The following points were established in evidence by these witnesses:—(1) that on the day when the rescue happened, Mr. Solano was all the day at Bullea, where some of the witnesses were transacting business with him; (2) that he was not at the Dunwar factory at all on that day; (3) that no sahib (gentleman) was present at the rescue; (4) that hedged round as the Dunwar bungalow is by walls, trees, &c., and the side nearest the road intercepted by vats and factory buildings, it was utterly impossible that any person in the verandah of the bungalow should be seen from the road; (5) that the top only of the bungalow is visible from the road; (6) that it was impossible for orders given at the bungalow to be heard on the road; (7) that while

the nearest part of the road is 1,400 feet from the bungalow, the part where the rescue is alleged to have taken place was upwards of 2,500 feet from the bungalow; and lastly, witnesses present at the quarrel proved that no weapons were used—that it was a case of a common kind, in which there was more noise than violence of any sort.

"This evidence having been given for the defence, Mr. Norris requested on behalf of Mr. Solano that the witnesses for the prosecution should attend in order to be examined in Mr. Solano's presence; to this request a very determined refusal was given, but it was at last granted, on Mr. Norris's finding a decision of the Sudder Court in support of the application, and the case was adjourned for some days for the prosecutor's witnesses to attend: all, excepting two, did attend. It has already been stated that they did not agree in their original depositions; that the three chowkidars had all deposed that no sahib was present; the others, whose evidence went to implicate Mr. Solano, did not know him, though they mentioned his name; and now, on the occasion of their cross examination, when for the first time confronted with him, they one and all said he was not the person, and they described the person as tall and dark, which Mr. Solano is not; on the contrary, he is short and stout, of a florid and thoroughly European complexion, and of the kind of hue usually regarded as Saxon.

"Observe now, the situation. There was Mr. Solano, in the magistrate's presence; there were the prosecutor's witnesses, asserting that he was not the person, and describing the man whom they meant to charge as altogether a different kind of person, and there was the evidence for the defence in direct exculpation. One would expect, in any court of justice that is guided by evidence, the instant dismissal of the case; instead of which, when one of the witnesses for the prosecution was examined, the magistrate, with manners and features distorted by passion, addressed Mr. Norris,—'Well, Mr. Norris, what did you give for the perjury of those witnesses?' (be it recollected, they were the witnesses for the prosecution),—or words to that effect; and at the end of the hearing adjourned the case to the 25th October, when Mr. Richardson recorded a sentence of conviction, fining Mr. Solano 500 rupees,—simply stating as his reasons, that he disbelieved the evidence for the defence, and only credited the original depositions of the very witnesses for the prosecution who, in cross examination, in Mr. Solano's presence, declared he was not the person whom they charged!

"The above result did not astonish those who knew Mr. Solano's position and Mr. Swinton's influence, only because the monstrous

injustice is of common occurrence; Mr. Solano himself, also, could not be surprised at any sentence against him, passed under the eyes and nose, as it were, of Mr. Swinton; his anticipation of this result had been shown by the application of Messrs. Theobald and Norris, that cases against him should be transferred to another jurisdiction, so long as Mr. Swinton remained at Arrah. Mr. Solano paid the fine, and appealed, not on the ground (which was open to him) that a fine of 500 rupees was, as is the fact, beyond Mr. Richardson's jurisdiction to impose, and therefore illegal, but on the merits of the case with reference to the evidence; and the judge has set aside the conviction: but for what, in the name of justice, if not on the ground of the impossibility of convicting legally on such evidence,* and, finally, to save Mr. Solano from this cruel persecution? No: two witnesses for the prosecution, as already stated, did not attend on the day appointed for cross-examination, and the case is remanded for them to attend, and is again on the same magistrate's file for investigation: and the magistrate, Mr. Richardson, was ordered to go to Dunwar and see if a person could be identified, and his voice heard from the bungalow, at the spot pointed out by the complainant as the place of the rescue.

"But the whole of this flagrant case of wrong has not yet been told. To complete it, we must revert to the time appointed for Mr. Solano's appearance. Mr. Solano's application to be allowed to appear to the charge by his vakeel being, as above stated, refused, in seven days after a warrant was issued to apprehend him, and was given to the nazir of the Fouzdary Court for execution; a proceeding, precipitate in point of time, the excuse of illness existing; equally unusual in point of form, the Nazir of the Fouzdary Court not being the officer to employ in such a trifling case, according to custom; and it was violent to order an arrest in so short a time without further communication in such a case. But the sequel is that to which attention is more especially invited.

"Mr. Solano was at Tarar, another of his factories five miles off, on the opposite side of the Soane river, but in Behar, when the nazir arrived at Bullea; the nazir was informed where he was, and the magistrate was informed by the nazir; there was neither flight nor

"* This is not intended as a reflection on the judge, but on the regulation under which he has given the decision referred to; so far as the judge has been free from the trammels of a bad system, he has exercised his appellate jurisdiction with fairness and a just discrimination."

concealment, and if the warrant was legal there still remained means of getting it executed; yet, on the fact of his absence from Bullea the magistrate sent a precept to the collector to attach all his factories and other properties in Shahabad. This precept was unprecedented; it was flagrantly illegal; the collector refused to execute it, alleging that it was illegal, and that its execution at a time when the manufacturing of the indigo was going on would ruin Mr. Solano, and throw great responbility on those executing it. Thus warned, a pause or halt might have been expected; instead of which, this young magistrate issued orders to the several darogahs, within whose district Mr. Solano had factories, to report to him the particulars of Mr. Solano's property, including the number of bigahs which he had under indigo cultivation, as if he intended still to enforce the attachment which the collector had refused to execute. The tendency of this proceeding, to injure Mr. Solano's mercantile credit and terrify him, is obvious.

"The nazir's conduct also must be stated. In reporting to the magistrate the absence of Mr. Solano from Bullea, and his consequent inability to execute the warrant, he did his duty. But he did more. Mr. Solano having factories on both sides of the Soane River, he summoned the farmers of lessees of the Government ferry, and gave orders to them to carry nothing across belonging to Mr. Solano's factories, and took mochulkas or security bonds from them, to secure their compliance with these orders. The orders and bonds did not remain a dead letter. Mr. Solano's indigo seed was accordingly refused at the ferry; the favourable time for sowing was lost to some of his factories; a stinted crop was the consequence, and from this resulted a pecuniary injury to Mr. Solano, estimated at nearly rupees 20,000=£2,000. Whether these orders were authorized by Mr. Swinton, or his successor, is unknown to Mr. Solano; but there is no doubt the nazir acted according to his view of their wishes.

"The reader may now be curious to know whether any persons have been made responsible for the illegalities just related. It may therefore be stated, that Mr. Solano represented the whole case to the deputy magistrate of Sasseram, an uncovenanted judicial officer; he summoned the farmers of the ferry; found them guilty, of course, as they were, and sentenced them to two months' imprisonment in the criminal gaol; he also sent a letter to the magistrate requesting an explanation of the nazir's conduct: the nazir explained—justify he could not; impeach his superiors in office he dared not;—he prudently confessed to having acted *proprio motu*, or on his own assumed authority; he remains to

this day unpunished, and is doubtless looking forward to similar promotion or reward to that which has been reaped by the other prosecutors of Mr. Solano. Mr. Swinton's position has been advanced from that of magistrate to that of acting collector, in the same zillah, with increased power of injuring Mr. Solano, and increased salary. In like manner Mr. Richardson, his assistant and pupil, is officiating as a full magistrate with increased salary. And Mr. Swinton, following the example of Government, has promoted the prosecutor Jowahir to the Sudder station, where he may daily worship the presence, and, like a faithful omedwar, watch and learn the passions and interests of his superiors. It will be hard if the nazir alone goes unrewarded.

"It might now be left to the reader to say whether Mr. Solano, or any other person having anything to lose, may not justly feel the greatest alarm at the state of the authorities in this district. But it remains to be observed that the case is still pending. The hearing, appeal, annulment of the conviction, and remand of the case to the magistrate for further investigation,—all took place in the space of a few days; months have elapsed since, and still the case remains not decided. The subsequent and recent incidents, therefore, have to be mentioned.

"On receipt of the judge's order remanding the case to him, the magistrate proceeded to the spot to ascertain personally whether Mr. Solano and his witnesses had given a true account of the relative situation of the road or place of rescue, and the bungalow, and had justly represented that it was impossible for orders given in the verandah of the latter to be heard, or the person giving them seen, by persons at the former, as he and they stated. The magistrate sent the prosecutor to the spot before him, and met him there. It would have been only fair to have secured the attendance on the spot of Mr. Solano also, and he and Mr. Norris did of course wish to attend: but, in fact, they were prevented by means which probably were contrived by the amlah, but cannot here be explained or commented on. Suffice it to say that no palankeen bearers were procurable for love or money, though there were hundreds at the station at the time. Mr. Norris, however, by great efforts, reached on horseback so far as to meet the magistrate on his return journey, and in a brief conversation on the road the latter stated, that the burkundaz, prosecutor, had pointed out a spot considerably nearer to the bungalow than he had named before; but that he, the magistrate, was of opinion that no one could be heard, at the spot even now pointed out, giving orders from the bungalow, and

that no one could be identified from such a distance. It is six months since this happened, and still the case is undecided.

"It is obvious, now, that the charge is deprived of every tittle of proof ever brought in support of it; its real character is now apparent, and justice requires not only that it be dismissed, but that the tables should be turned on the prosecutor and his co-conspirators. That there was a rescue of cattle, it is true, but the cattle belonged to Bhowani Rai, as was notorious to the villagers, and therefore they turned out in support of their fellow villager, and helped him to recover his property, as they had a right to do; to this, the real character of the transaction, Mr. Swinton and the assistant magistrate seem to have been blind, through their zeal to find or make a case against Mr. Solano. When all the strange circumstances of this case are summed up, from the appointment of the prosecutor burkundaz, little doubt can be entertained that the whole affair was a preconcerted one, got up and contrived by the police to gratify the animosity of Mr. Swinton towards Mr. Solano: and it may be added that it is a type of a numerous class, which in their gradual and eventful effect have uprooted justice, and corrupted and enslaved the people; but they remain comparatively unknown to the world, through the well grounded fears the sufferers have of the ruinous consequences of disclosure, especially against a civilian of Mr. Swinton's connections and influence. This is the real cause why many persons of capital and respectability feel so averse to settle in and develop the resources of the Mofussil, where the whim or malice of a man in power may cause his disgrace and ruin.—*April*, 1854.

"THE REMAINDER OF THE CASE IS SOON TOLD.

"We have seen above that the judge, in reversing the orders of Mr. Swinton's assistant, directed him to go to Dunwar and see whether a person at the bungalow could be heard and identified from the spot where the rescue is said to have taken place, and to summons the two remaining witnesses to be examined again. In the same Roobukaree the judge directed that, after the case was finally disposed of, Keolapate, one of the plaintiffs, should be transferred to the Sessions to take his trial for perjury, which crime was apparent in the proceedings. The order was given the 1st November, 1853, and it was not till the middle of September, 1854, that Mr. Richardson disposed of the case,—which, contrary to all law and custom, was kept pending for eleven months, for no other imaginable purpose than to prolong Mr. Solano's anxiety and vexation. The two witnesses were duly summoned, but never made their appearance, and as their former depositions were given in private,

and they were never confronted with Mr. Solano, it is generally believed they were tools of the police burkundaz, who falsely personified the witnesses. At all events, the law requires, that, when the witnesses do not come forward, the case must be dismissed and the accused acquitted; this is also the universal practice; but as no law is observed in Mr. Solano's case, the magistrate, to the astonishment of the whole district, confirmed his former fine of 500 rupees, and refused to transfer to the Sessions the perjurer Keolapate, stating he did not consider him guilty! This order, which stands as a monument of how justice can be administered in the Mofussil, was again appealed to the Sessions Judge, who reversed it on the 29th October last, directed the fine to be returned to Mr. Solano, and declared in his record that there was no evidence whatever. Thus ended this extraordinary case, which, though so trivial in its nature, without a particle of evidence, and which every one knew to be perfectly false and trumped up, has been used for eighteen long months as an instrument of torture to satisfy private vexation. What redress can be obtained for the harassment and losses Mr. Solano has experienced? None; from the highest personage who had a share in this *conscientious and honourable transaction*, to the lowest police spy, all and every one is protected by the laws, or rather by the system—the system which presses down India, and which will keep it down till it is removed."

Whatever justification Mr. Swinton may have been able to offer for his proceedings, it is impossible to deny that a prejudice existed in his mind against Mr. Solano. It was matter of notoriety throughout the country; and all who have the slightest knowledge of India know that the result of such a feeling on the part of a vindictive official is ruin, more or less rapid, to the individual who has raised his ire. In Mr. Solano's case the result has been very nearly ruin, and perhaps will be death. The circumstances, the locality of the outrage upon him, are such as must convince every dispassionate reader that it could not have been attempted, had the assailant not been sure of no interference on the part of the police authorities. I have been favoured with the sight of a private letter from an assistant of Mr. Solano's, who

describes the attack and its motives. I will give the substance of his statement. Mr. Solano was not attacked by oppressed ryots or tenants, but by a servant whom he had dismissed for oppressing them, the man having been employed in collecting his rents. This man, a bold and vindictive villain, assembled a band of about 300 men, chiefly his own tenants, commanded by himself, and about seven others on horseback, and attacked Mr. Solano, who was on a tour of inspection round his estate, in an outlying cottage, at midnight, and left him for dead. *This cottage was within sight of the police station, and the police made their appearance upon the spot half an hour after the ruffians had decamped,* leaving Mr. Solano in a pool of blood, his arm broken, covered with sword and spear wounds. How he escaped with life is marvellous. Let me ask if it is credible that the police should have no information of the assembly of such a band, which, according to Mr. Solano's assistant, took a whole day to gather? and also how it was that they took no steps to interfere till the outrage was completed, when the attack was within 300 yards of their station? It is impossible to doubt that it is directly traceable to the well known ill-feeling of the magistrate against Solano, whether that feeling was founded in reason or not. The question is one of vital importance; it directly affects the settlement of Europeans in India. Are we still to be told that Mr. Swinton's reply to Mr. Solano's charges is satisfactory, without having the opportunity of judging for ourselves?*

In 1849 nearly the whole non-official European popu-

* Three weeks before this attack, Solano wrote to his legal adviser in Calcutta, that if the magistrate were not removed from his district, he should be obliged to leave the country.

lation of Calcutta attended a Meeting in the Town Hall, to protest against the Black Acts; the main principle to which the Meeting objected being the one which is now sought to be introduced, namely, their subjection to the courts of the Company. At that Meeting a Mr. Cruise, a settler in the Mofussil, gave a description of the treatment he had received at the hands of a judge named Pringle, and a magistrate named Pearson. I give the substance of his statement abbreviated, though it will lose by condensation, for it is too lengthy for me to extract it in its entirety.

Mr. CRUISE.—"I hold in my hand a copy of a summons, addressed to me by one of those boy magistrates, of whom we have all heard so much, which in itself would be nothing singular, were it not that you will presently find a judge of twenty years' standing approving of its tenor and substance.

"'*Summons.*

"'To RICHARD CRUISE, ESQ.

"'*Inhabitant of Purnea.*

"'WHEREAS I have been directed by the sessions judge of this district to take *your defence in the matter of a letter written by Mr. J. C. Johnson*, dated the 5th ultimo, to my address, *you being his legal adviser*, and *the said letter containing some improper remarks*, you are hereby required to appear before me *in person* (even the words, by mookteyar [attorney] are scratched out), on Monday, the 7th instant, at nine o'clock in the forenoon, *to answer to the said charge*. Herein fail not. Dated the 5th day of May, 1849.

(Signed) "'E. S. PEARSON,

"'*Magistrate.*'

"I considered this summons a curiosity, and determined to retain it for my future justification in refusing to obey it—acknowledged its receipt thus:—'Whereas the above summons is irregular, illegal, and in all respects extremely improper, I refuse to obey it.' The magistrate tried to get back the original summons, and refused the acknowledgment, which his burkundauze (police officer) finally threw in my compound (enclosure round the house), and ran away. I walked to the magistrate's house, and threw the acknowledgment into his verandah. As I returned, I was assaulted, by his order, by his peons (constables), sepoys, and others. In the scuffle which ensued, I wrested a musket and bayonet out of the hand of one of the sepoys, who had presented it to my breast, and made good my way home. I immediately applied for protection to the judge, but that gentleman replied, *'There is nothing whatever in the summons issued by the magistrate, a copy of which you submit for my inspection, to call for my interference.'* Accordingly I waited upon him, and in the presence of two other gentlemen gave him a letter, in which was this notice:—'That I was at all times ready to obey any and every legal order, but that I would not submit to illegal violence or outrage, or place myself in the power of the magistrate to insult or injure me (as he had already done in his court on a previous occasion); and that as the judge refused to protect me, I should avail myself of my right as a British subject to carry arms for my self-defence; and that I would not obey any warrant which, like this summons, was in its form and substance illegal.' After having given this notice, I carried arms for self-defence, and every one knew it. On the 10th I was obliged formally to withdraw an appeal pending in the Judges' Court, in

which I was agent of the appellant, to protest against the judge's misconduct, and to give notice that I would make a representation on the subject to Government. On the 11th I again attended to advise and protect a poor man, who was about to prefer a complaint of maltreatment against both the magistrates. It was well known that this petition would be presented, but the man dare not present it without the aid and protection of some one whose presence would ensure respect. He applied to me, and I freely rendered my assistance. I went to court, attended by two other Christian gentlemen as witnesses of what might occur, and by four orderly peons,* who, as usual in the Mofussil, carry swords, which, on reaching the court-house, they put into my buggy. The man presented his petition. The judge asked what it was about. I advised him not to tell, but to request that it might be read. The judge ordered it to be given back to have an abstract made of it, *as he pretended, according to custom.* The man put out his hand to take it back, when I quietly put my hand on his arm, and told him to follow my advice in everything. 'Let Mr. Cruise be fined 25 rupees,' said the judge. 'For what, sir,' said I, 'have you fined me?' Whereupon, without answering my question, he coolly declared to his amlah the following falsehood:—

'Whereas, a certain man presented a petition, and it was ordered that it be given back to him to have an abstract made of it, according to custom; and it was given back. *Whereupon, Mr. Cruise, snatching the petition out of the hand of the man, threw it down in the face of the Presence—*'

* Every private gentleman in the Mofussil keeps a few of these in his service.

'I observed that I did not do that. But he persisted in dictating the lie,—which every one in court knew to be a lie. I then said, 'Let not the Presence write that which is false.' *Whereupon, dashing back his chair, rising up and striking the table with his fist,* he said, '*Let Mr. Cruise be fined 50 rupees, and if he does not pay, let him be sent to jail for twenty days.*" (Mr. Cruise then states the law upon the subject, and the illegality of these proceedings.) "I said quietly, I would not pay, and turned to leave the court. The judge roared out to his myrmidons to seize me; in an instant a dozen or more seized and dragged me back to his presence. *He instantly ordered me to be tied up, and as no ropes were at hand, ordered the punkah ropes to be cut, and with these I was bound.* An officious retainer asked him what was to be done with the two gentlemen who had accompanied me, when he ordered them to be seized too; and accordingly, they, and one of my peons, were all tied up in a bundle together. I was honoured with a separate rope to myself. I then said that in my pockets were two small pistols, and requested they might be taken care of. The judge does not deny this. But it was pretended that I went to court to shoot him with them. It now became necessary to justify this outrage. My buggy and palankin were searched, and the arms in them found. The judge caused all the doors to be shut, a great uproar to be made, sent off for a company of sepoys to quell the pretended affray, and despatched a letter to the magistrate to come forthwith. When he arrived, the judge and he seated themselves in the *iljas*, or tribunal of justice, and the official document, in which had been recorded that I threw the petition down in the face of the Presence

was read aloud. I declared that this was false. The judge ordered me to be silent. I replied, I would not be silent; when he said, with vehement anger, '*If you will not be silent, I will order you to be gagged.*' To which I replied, '*You would order me to be crucified if you dared.*' '*Gag him,*' said he to his burkundauzes, gnashing his teeth; and immediately a cloth was thrust in my mouth, and tightened round my throat till I was nearly strangled. I was kept nearly two hours in this manner, my face twisted up to the ceiling, not permitted to open my lips, a Mahomedan burkundauze holding the ends of the cloth and giving it every now and then an additional wrench."

He then asserts that some native officers of the court were brought forward as witnesses against him, but "I will do them the justice to say that these swore nothing against me, but against the judge, how I had been fined, seized, tied up, &c. *They did not accuse me of any offence whatever*, but it was all the same, they were supposed to have sworn against me; *and I was directed to give bail to the amount of* 5,000 *rupees, that I would attend and answer any charge which might be preferred against me thereafter, and to find security in a similar amount that I would keep the peace towards all Her Majesty's subjects.* I put in a protest against the jurisdiction of these gentlemen, declaring myself a British subject, and claiming the protection of the Supreme Court. They would neither receive nor record it. I tendered bail on the spot. They refused it, and declaring it was now late (noon), drove home to breakfast, leaving us in custody of the sheriff. I soon procured other good and sufficient bail,—Company's paper,—and tendered it to the sheriff, but he

could do nothing without leave of his master. About sunset I was marched down to the magistrate's house, where I waited outside the compound while my mookteyars (attorneys) waited on him for the execution of the necessary bonds. *The two gentlemen who had accompanied me to the court being, unfortunately, East Indians, and amenable to the jurisdiction of the court, were unceremoniously sent to jail.* As the sun was setting, the mookteyar brought the bonds to me, which I instantly endorsed, and the deeds and money were taken back to the magistrate, who *observed the sun had set; that it was after hours; that he would not now receive the bonds, the earlier execution of which had been prevented by his own impudent delay; and to jail I was sent. And there we remained that night.*

"On the following day we were released, but our bail bond requiring us to appear and answer any charge that might be preferred against us, we so appeared on the 14th. The first thing the magistrate did was to compel us to stand in the felons' dock, among the murderers and dacoits. I remonstrated, reminding him that *we were neither prisoners, nor as yet charged with anything.* 'You shall stand, Sir,' he said, 'where the Court orders you.' After a while, I and another gentleman were allowed to leave the dock; the other two, not being sufficiently respectable, were obliged to remain in it. The depositions of the 11th were read, and I was asked what I had to say to the charge? I asked what the charge was? The magistrate said he had not time to argue with me. I had heard the depositions read. I answered, Yes; it was stated that I had been maltreated and bound; but what was the charge against me? He said, if I would not plead, *he would take down that I*

had nothing to say to the charge. 'Sir,' said I, 'you can record that falsehood if you choose; but you ought rather to record that I asked to know what the charge against me was, and the magistrate refused to tell me.' *He recorded that I had nothing to say to the charge, and declined to answer.* I read aloud a protest against his jurisdiction. He refused to receive or record it. He then turned to Mr. Babonau, another of the pretended defendants, and asked him what he had to say to the charge? I advised him to ask what it was, when the magistrate ordered me to be silent; and Mr. Babonau, thus ensnared, admitted there was a charge, by pleading not guilty to it. A bundle of depositions by some fifteen or twenty Mahomedan burkundauzes, *taken when, where, and by whom, none of us knew,* were then read, and the deposers sworn *with so little decency, that I pointed out to the magistrate a Hindoo swearing on the text of the Koran.* Not one of the respectable persons present in the Judges' Court on the 11th was produced, but burkundauzes and convicts—creatures entirely dependent on the judge—were brought forward to swear that Mr. Cruise had a large body of armed men at the Judges' Court on the 11th May, *ready to make an affray; for as there had been no breach of the peace, 'ready to make' was held to be synonymous with 'to make.'* When these depositions had been read, the magistrate read from a paper, *which he had prepared before he came into court,* that the case had now assumed a much more serious aspect, and that we must give heavier bail for our attendance, and heavier security to keep the peace. He accordingly extorted from me bail to the amount of 8,000 rupees, and security in 10,000 rupees; the alternative being, to go to jail. If I had not been able to

give this security on the instant, to jail I must have gone; and the magistrate did all in his power to make it difficult. I gave it, and was released. We were summoned again on this bail two days afterwards, viz., on the 16th; and a charge was preferred, that on the day on which the magistrate had caused me to be assaulted, I had a large body of West Country peons at my house. So impudent and desperate a perjury was this, and so easy of disproof, that *it was not considered safe to retain these depositions along with the other proceedings, and they have been made away with,* so that I have been unable to obtain copies of them. *Copies of all these atrocious proceedings have been denied to me invariably on repeated applications,* preventing my taking the necessary steps for redress."

Mr. Cruise proceeded to state a similar altercation which ensued between him and the magistrate as to the bayonet and musket which he had wrested from the hands of the sepoy who attacked him on the 5th of May; that this resulted in his house being searched, and the imposition of a fine of 500 rupees; that the magistrate levied this fine by what he calls "the plunder of his property;" that he was again summoned on his bail; that he then set the magistrate at defiance, and challenged him to levy his bail; that the magistrate then finding that he could not deal with the case as a justice of the peace, transferred the case to "his fellow-conspirator," the judge, as a civil case; and that the latter functionary, "after having kept me in attendance on bail to the amount of 8,000 rupees for two months, termed the charge a case of resistance to process; held an *ex parte* proceeding *on the infamous proceedings of the magistrate; and, during my absence in Calcutta, fined*

me 500 rupees for resistance to a process which was never issued."

Now here was a case in which the gravest charges were publicly brought forward in the largest meeting ever assembled in Calcutta. Mr. Cruise may have been in the wrong, his law may have been bad, his conduct unbecoming. But if so, why was not the matter inquired into, and a public justification of the proceedings published? I believe there was never any denial of Mr. Cruise's statement put forth, and I know it is generally believed to have been true in India to this day.* Yet he got no redress, and his persecutors, if such they were, remained in the service. Here, again, I say, a gross wrong was done. If the officials were innocent, why leave all men in the belief that they were guilty? If Mr. Cruise's statement was true, did not justice and policy demand the removal of such men from the bench? Does not such a system of burking charges, upon the rare occasions when men are bold enough to come forward and make them, lead irresistibly to the inference, that a hundred cases of oppression may occur, and must occur, of which nothing is ever heard—that every poor victim of an official's wrong-doing will submit in silence and fear, when he sees that men of wealth and station cannot gain redress?

These three cases are known, through the whole length and breadth of India, to every one who ever reads the papers. There are hundreds of similar and worse cases which are well known and talked of privately, but which the sufferers have never dared to publish, because they know that such a proceeding would only result in their own ruin and persecution, and in perfect impunity,

* The judge ever after went by the nickname of "Gagging Pringle."

perhaps in increased favour and preferment, to the official accused. I could mention many such from my own knowledge, which have been communicated to me under promise of not revealing my informant's name. But I have no wish to encumber my pages with many such cases. I must leave it to the reader, after having shown the shield which Government throws over its officers, to conclude that it is impossible but that such evils as I have mentioned must have a wide existence. I will, however, quote a few instances, upon the authority of Mr. Wilson, which were communicated by him to Mr. Dickinson, the Secretary of the India Reform Society, and have been kindly placed at my disposal. Wilson is in his grave, and therefore the publication can do him no harm :—

"If the civilians are convicted of the gravest faults, they are generally promoted and rewarded by the Government, as if to defy public opinion in India, and to show that proof of a civilian's malpractices is all that is required to assure him of the favour of Government. For example, the judge mentioned in my letter to Bright was convicted of the most disgraceful frauds; it was impossible that he should remain a judge: they gave him a better berth, with an increased income, and increased opportunities of fraud, though they reprimanded him; and he is now (1853) employed in the opium department.

"Another, named ——, imprisoned two English proprietors, and exposed them to all sorts of indignities. He was completely mad. That was proved. The Government released his victims, of course, without any indemnification of loss, or making them any amends, and gave —— leave of absence to England for two

years. On his return, as mad as ever, he was again made magistrate, and again commenced persecuting an Englishman in the same fashion. The Government again released his victim, *and sent him to a district where there were no English, knowing that he might do what he liked among the natives, without exciting much public uproar.*" This was, I believe, the same judge who, as lately stated by the *Englishman*, tried, convicted, and *hung* a man within two hours! A not unnatural consequence of keeping maniacal pets in power; but, perhaps, as the last mentioned victim was "only a nigger," and there are a hundred millions of them, one more or less does not much matter.

Mr. Wilson continues:—"With regard to criminal justice, I will give an instance of a petty theft. I lost 10lbs. of Indigo, value, perhaps, £2. I was obliged to send for the police. They came to my house, and took away the prisoners and witnesses, all bound, to dance attendance for five weeks, until it pleased the magistrate to hear the case. During this time (and in similar instances it is always some weeks before the case is decided) the witnesses remained prisoners; and although such detention is their ruin, they were put in the stocks, to prevent their escape. During this interval, the prosecutor must pay each witness two rupees a month for diet, even though he may be a poor man, not gaining as much himself. In this case, the police cavalcade extended over half a mile of ground, marching in Indian file. I was obliged to pay all the functionaries of the police and of the magistrate's court. The affair cost me above £8 in expenses, and some months of time."

Mr. Wilson then recounts a case of bribery, in which "another planter, a Mr. M——, tried to bring the

parties to justice." This account was afterwards corroborated by Mr. M—— in person. "Mr. M—— having learnt that a certain native had been obliged to pay a sum of £400 to the mother-in-law of a certain collector, who had married a native woman, under threat of losing an estate about which proceedings were then pending in the collector's court, went to a young magistrate, and called upon him to report the proceedings. He would do nothing. M—— then went to a sub-collector, and threatened to publish the facts in the newspapers, if a report were not made. Thereupon the sub-collector made an official report of this corruption. The collector summoned the accuser to prove the facts before him. The native's account-books were examined, and proved the payment of the sum, but not the person to whom it was paid. Upon that the accused were declared innocent by the collector, and the accuser dismissed. Soon afterwards, M—— learnt that persecution, instigated by the authorities, had driven the accuser out of the country. He immediately made a fresh complaint, and demanded a judicial inquiry. This time the collector was frightened; *he demanded and obtained his removal from that district, and employment elsewhere.*"

I will also quote the statement of a very common mode of persecution on the part of the magistrates, the guilt of which it is obviously almost impossible to bring home to them :—

"It is easy to involve a man in some accusation, and for the magistrate to summon him, not to the nearest court, but to some place fifty or sixty miles off," (as in the case of Thomas and Bhawanny Lallah.) "When the victim gets there, he finds no lodging; he waits his

turn in the magistrate's court; but from day to day his case is not called on, so that he is obliged to follow the magistrate all round his district for many weeks, without having an audience. At last, if there is the least ground for legal proceedings, the magistrate can refuse his bail, and there he is detained and imprisoned for some time longer. All this is done with impunity to natives, and often to planters also."

I have myself heard a civil servant declare that he so punished a man of whose rascality he was convinced, but against whom no legal proof could be obtained.

I will conclude with one more quotation from Mr. Wilson:—

"A very common cause of the armed affrays between planters and zemindars arises in this way. A ryot, the tenant of a zemindar, offers himself, when short of money, to the planter as a cultivator of indigo, points out his lands, and receives advances for the purpose of cultivating indigo. Afterwards, he declares that the lands so indicated did not, or do not now, belong to him; that he raises some other crop; and the planter, finding himself robbed, enforces his rights by the strong hand, if he can. On such occasions we never think of appealing to the Courts of the Company, for we well know what a difference there is between 'justice' and the proceedings of these Courts. But in consequence of this want of law in the country, the planters suffer immense losses. In short, so far from the Company having aided the planters by its government, it has done nothing but increase the facility of their ruin; and they would have created a hundred times more commerce in India, had they not been hampered by the existing system. They now run enormous risks; and make, in

twenty to thirty years, fortunes which they would make in five years with perfect ease, if there were any law or order in the country, such as are to be found in every other civilized country. From want of it, their loss of capital each year is at a rate which would not be credited in England. I myself have lost, during the past year, £2,500 in debts, which have been accumulating for three years, from the impossibility of obtaining redress in the Company's Courts. Every planter is pillaged in the same fashion every year, and they are obliged to calculate on these losses, as part of their working charges. I never dreamt for a moment of seeking my remedy in the law courts; that could only have increased my loss."

Mr. M—— confirmed this statement, and said that he had, in his own case, abandoned bonds and debts to the amount of a lac of rupees—£10,000. He added, that he had now depending, in the Moonsiff's Courts, suits of two years' standing, although these officers are obliged, by law, to decide their cases within six months.

You can easily conceive, after reading these statements, that a real *bonâ fide* case is hardly ever brought into an Indian law court. In fact, no man who has had any experience of them, would dream of stating the plainest and truest case in its bare simplicity and truth. He would not, indeed, meddle in the matter himself; but his law agent, or mookteyar, would cook it up to the requisite degree. I have the permission of Mr. Forlong, one of the few men who have had the boldness to come forward openly and state their grievances, to mention an instance or two of his experience. I extract the following notes, taken of his conversation immediately after the last interview I had with him :—

"While I was at Mulnath, the head factory of the

Bengal Indigo Company, within fifty miles of Calcutta, and at a time when I was general manager of the whole of the factories belonging to that Company, I had occasion to go and settle the rents of a certain village, and receive the rents due from the people round about. My servants went the day previous to pitch my tent. The tent, I found on my arrival, had been destroyed, the ropes cut, &c. The magistrate, to whom I at once went and stated the case, said, 'Now, do bring that case into Court just as you have stated it to me; don't employ any mookteyar, but let us have the plain statement, and your servants as witnesses.' After some weeks the case came on; another magistrate, or the deputy magistrate, had to decide upon it, and my fine truthful case was most unceremoniously kicked out of Court.

"I remember another instance at the same factory. I expected an attack on one side of the factory; a neighbouring zemindar, I was informed, intended to carry off a portion of my crop. I therefore set a number of men to watch it. Suddenly, one day, a false alarm was raised that the police were coming. The men rushed headlong over the river, and in the scurry one was drowned. Some time after a darogah was sent to inquire into the death of this man. It was the height of the manufacturing season; if my servants had been dragged off to the Court, the loss would have been immense. I therefore begged the darogah to make a true report. He demanded a *douceur;* and after some discussion I agreed to give the man 250 rupees, to make a true report of what had occurred. A week after, the magistrate sent another: I had to make him a similar bribe. Shortly after, two were sent, and demanded the same sum each; I paid it,

and represented the case to Government. The magistrate was reprimanded, and shortly afterwards removed to another district."

But I need scarcely say, the Bengal Indigo Company were not indemnified. English people would perhaps think this payment a folly in the first instance. But if it had not been made, the indigo manufacture would have been stopped, the servants on whose superintendence it depended carried off prisoners, as in the case recited by Mr. Wilson, and the loss would have been thousands of pounds instead of a hundred; that Mr. Forlong was forced so to act, in order to protect his employers' interests, is owing to the abominable want of all law and order and efficient police in the country, and the blame attaches to the Government for neglecting their primary duty of providing means of proper protection, a duty, upon the fulfilment of which their right of taxation rests. In fact, as stated by Mr. Wilson, in his letter to Mr. Bright, an accidental death is a "calamity under which the whole village suffers;" to conceal it is bad, to reveal it, worse: the darogah marches down, and extorts money from everyone able to pay, under threat of accusation of murder. Finally, if the magistrate is suspicious of foul play, or anxious for a conviction, the darogah seizes on some poor and friendless individual, tortures him into a confession, suborns witnesses, gets him convicted, and everybody (but one insignificant unit) is perfectly satisfied.

I shall now quote one more witness in corroboration of my statements, Mr. Francis Horsley Robinson, now dead, but formerly a member of Council in the Agra Presidency. From many of the assertions in the able little pamphlet from which I quote, I dissent; but these

only show that this liberal and amiable man was not quite free from the prejudice which a civilian's position infallibly produces. The whole pamphlet is well worth the perusal of all who take an interest in India.* It abounds in sentences which point out the abominable state of the law; the favouritism shown to civilians, and their great arrogance; the hatred of the natives to our Government; the evils resulting from that rampant proselytism now prevalent in India, through the influence of the fanatical "Saints," who have long been the dominant party in the Indian Government; the dictation of Government to their judicial officers; the despotic demeanour of these officials, and their subserviency; the means which their duplicate functions give them, at once of oppression and escape from its consequences; the extraordinary consanguinity of the Civil Service; the necessity of independence in judges; and the necessity of an easy mode of recovering damages against an officer for exceeding his authority or acting illegally. I shall extract a few things apposite to my argument:—

"A civil servant takes a dislike to two highly respectable native revenue officers; knowing that they would be protected by the Board of Revenue, he does not attack them in that department; but he institutes proceedings against them as magistrate, imprisoning them, and, under pretence of enforcing jail discipline, shaves their beards off—an intolerable insult, according to the notions of the people. The sentence of imprisonment is reversed by a higher court, but the sufferers receive no

* "What Good may Come out of the India Bill, or Notes of what has been, is, and may be, the Government of India." By F. H. Robinson. Hurst & Blackett, 13, Great Marlborough Street, 1853.

compensation, and the civil servant is suspended barely for six weeks."

"There is no mode of prosecuting a magistrate, whatever wrong he may commit. . . . . So strongly is the irresponsibility of the magistrates felt, that the highest court in the country, when I was in it, objected unanimously to the subjection of British subjects to the magistrates of the country, and they did so on the specific ground that the power of the magistrate was too absolute, and that there was no redress, by an action, for damages or otherwise, against the abuse of authority by a magistrate—no means of enforcing compensation for injury done."

[There are, undoubtedly, clauses in the proposed Penal Code for the punishment of public servants; but they are so worded, especially when taken in conjunction with the before-mentioned Impunity Act, that I do not hesitate to say it would be all but impossible to obtain a conviction under them. And if obtained, the result would be this: a man, ruined by an official's spite, would have the satisfaction of seeing him slightly punished, and probably restored to the service in a higher and better post immediately afterwards, but would never get the least indemnification of his own losses from Government.]

"In the next place, the Courts are inefficient. A judge can be removed by Government for any order they do not like. This power has not, of late years, been used;* but there it is, and unless a judge be prepared to risk his place, he dare not act in opposition to Government. *I have known a judge refuse to join me*

* This is not strictly correct, though I believe no absolute removal from the service has taken place.—T. H. D.

in issuing an order which he thought right, because it would draw down upon him a reprimand from Government. There are, besides, other ways of influencing a Court; THUS, I HAVE BEEN AWARE OF A GOVERNOR COMMUNICATING PRIVATELY WITH THE JUDGES OF THE HIGHEST COURT IN THE COUNTRY, AND GIVING THEM HIS VIEWS AND ARGUMENTS IN A CASE OF IMPORTANCE, IN WHICH HE WAS ANXIOUS TO SECURE A DECISION FOR GOVERNMENT, AND HE GOT THE DECISION. It is impossible to read men's hearts, and the decision must be taken to have been given on conviction; but the fact of the communication between the Governor and the Judges was known, and where such things happen, the distrust of independence of the Court must be great. I HAVE KNOWN AN INSTANCE OF A GOVERNOR-GENERAL CALLING FOR AN EXPLANATION OF ONE OF THE SAME COURT'S DECISIONS. I HAVE KNOWN A MAGISTRATE HOLD SECRET AUTHORITY FROM GOVERNMENT TO DISOBEY THE ORDER OF THIS COURT ON A PARTICULAR POINT. In the third place, the Courts are inefficient. I was myself appointed to the Chief Court, though I had been a revenue officer all my life, because it had got into such confusion, that it was thought necessary to appoint some one unconnected with the squabbles existing in it, to make the machine work at all. I have seen many men sitting in that Court as incompetent as myself."

I most specially beg your attention to this passage:—

"This state of the country, this uncertainty of rights, and the great power lodged in the hands of the collectors and magistrates—although Englishmen are personally exempt from their jurisdiction—form powerful preventives to Europeans undertaking extensive works and speculations in India. Hence, one sees them becoming

scarcer as they get farther from the Supreme Court, although it would be natural for them to cluster more thickly in the more congenial climate of the north of India.

"Everywhere, out of Calcutta, the position of the European settler is this,—either he possesses the favour of the authorities, in which case he has unfair advantages; or he is under their displeasure, in which case he is at an unfair disadvantage. But neither position suits an independent, prudent man. I HAVE KNOWN A HIGHLY RESPECTABLE ENGLISH MERCHANT TOLD IN OPEN COURT BY A MAGISTRATE THAT 'THE GOVERNMENT HAD THEIR EYE ON HIM, AND THAT HE WAS A MARKED MAN,' BECAUSE HE HAD TAKEN A PART IN A CASE WHICH THE MAGISTRATE DID NOT LIKE."

Mr. Robinson proceeds to state, that if he were to settle in India, he would not trust his property out of the Supreme Court's jurisdiction. He complains, I am bound to say, of its expensive procedure; but I do not think he can be well informed on this point. But, supposing his averment true, there is the fact that he would prefer its jurisdiction to any other now constituted in India.

Mr. Robinson mentions one more case, which I think worth quoting, to show the English public how subscriptions are got up in India. It is needless to state that subscriptions to testimonials to high officials are not seldom raised in the same way. I condense Mr. Robinson's statement:—

"A man of respectability complained to the Board of Revenue that he had been induced, through hope of gaining the collector's favour, to subscribe to a dispensary; was disappointed in this hope, and withheld his subscription, and was consequently subjected to a series

of petty persecutions, *and especially had been summoned to a distance, to be asked why he had not paid his subscription.** We called on the collector to answer. He did not deny the facts. We reported the matter to Government. *We were told in answer that the collector was right, and the man eventually paid his subscription.*" He then says that he has asked natives, "'Why do you subscribe' (to purposes of charity or utility) 'against your will?' And I have been silenced by the reply, 'What would become of me if I were to displease the magistrate and collector?'

"Some years further back,—I think about 1835 or 1836,—a magistrate, with a view to put a stop to burglaries and thefts, ordered that in every village a party of the inhabitants should perambulate the village and its purlieus all night. He had no more authority to do this than to order the Governor-General to keep watch and ward. He reported to Government at the end of the year what he had done, and actually, instead of a reprimand and removal from his situation, he was highly commended, and all other magistrates were urged to follow his example. And they did so, almost without an exception, so that the whole country was nocturnally worried and disturbed in this way for a year or two, till the madness of the project became too evident, and the whole thing died away."

I shall now quote a few passages from "A Letter to the Court of Directors of the East India Company, regarding Judicial and Revenue Administration in Bengal, by a Member of the Bengal Civil Service, lately

* Another confirmation of Wilson's statement, and of the frequency of such cases as that of Bhawanny Lallah.

retired" (London: Parker, Furnivall, and Parker, Military Library, Whitehall, 1853). I condense again:—

"In 1800, the Government of Bengal dispossessed the proprietor, Gokul Chunder Gosaul, of certain villages, 906 in number, yielding an annual rent of about 8,200*l.*, situated in Chittagong. These villages were all subject to the terms of the Marquis Cornwallis's solemn pledge in the perpetual settlement. The Government appropriated these villages. This act was committed without the intervention of any legal process, done under 'the good old rule, the simple plan,' by the Government, the wielders of a powerful arm, and the possessors of a full purse.

"In the year 1804, however, the heiresses and successors of Gokul Chunder Gosaul brought an action against the Government for the recovery of these lands; and in August, 1815, it was finally decided by the Sudder Court, that the suitors should hold of the lands which formed the cause of action, such portion as might have been ascertained to have been, in the year 1764, the undoubted property of their family. The Court visited the illegal act of the Government by saddling them with the entire costs of the action; for the Court held that the course pursued was illegal, as their own Regulations expressly provided that all questions connected with the financial rights of the Government should be decided by the established courts of judicature.

"By the terms of the decision, it appears, moreover, that the Government, even if so disposed, could not have instituted any action for the lands they seized on, because the date of the cause of action was previous to 1764. Notwithstanding this clear definition of the law by the highest Company's Court of Bengal, it will be

distinctly shown, in the following pages, that the Government in Bengal have persevered in dispossessing hundreds of individuals of land under pretexts similar to and equally illegal as in the case of Gokul Chunder Gosaul, and in an equally summary manner, without the intervention of any suit in any court, and of course without any decree in justification of their exercise of power. Also, that they have proceeded thus irregularly to increase their own revenue in Chittagong by separately assessing those lands, and settling for the payment of revenue with individuals other than those from whom they, the Government, took them.

"This course was persevered in, notwithstanding that it was stated, in language so strong as to all but overstep the boundaries of respect, by their own subordinate officer, that they, by their proceedings, had gone beyond the law. The Government acted thus in prosecution of claims founded on alleged rights originating before 1765. Four commissioners of revenue in Chittagong successively endeavoured to enforce the claims of Government to lands in that district, 'by the exertion of executive power,' notwithstanding 'the Government had lost its right to sue.'"

And the author proceeds to prove his assertions irrefutably. But the Judge at Chittagong was disposed to act in accordance with the law, and consequently to thwart the intentions of Government: whereupon the Secretary to Government, who was the prime mover and director of the bewildered Governor in the matter, addressed to that official a letter.

The "Retired Member" thus proceeds:—"I will here quote a letter, No. 13, dated the 5th of January, 1837, written by the Secretary to the Bengal Government to

the Judge of Chittagong. I do so to show the support that the officer, who, in this paper is described as having been removed, must have received from the highest authority years previous to his removal; and also to show what are the ideas of the independence of our Judges held by the Bengal Government, when such a letter is addressed to a Judge, whose duty it was to hear and decide all cases impugning the acts of the Government Collector, brought by parties aggrieved by him. Here is the letter:—'Sir,—The Right Honorable the Governor of Bengal, having had before him a copy of a letter addressed, under date the 12th ultimo, by the Collector of Chittagong to the Commissioner of the division, a transcript of which, as appears from the last paragraph, has been forwarded to you by Mr. Harvey, the Collector, I am directed, with reference to the great importance of the subject, as regards both the due maintenance of the authority of the Government, and preservation of the peace of an extensive district, to address you direct, for the purpose of impressing on you the mischievous consequences which must be expected to ensue, if those classes of the agricultural population of Chittagong, who appear to be opposed to the survey now in progress, and to be in a state of considerable excitement in consequence of that measure, should be deluded by designing persons into a belief that you, the highest judicial functionary, are disposed to support them in opposition to the views of Government, and to become a partisan in their cause.

"'With reference to your established character as a public officer, the Governor feels confident that you have not, in any manner, willingly afforded grounds for erroneous impressions of the nature above alluded to;

and this communication is not made with the slightest intention of imputing blame to you, but merely in order to remove at once, at a time when a considerable degree of excitement appears to prevail, and on a point of much importance, all room of misunderstanding, and to place you fully in possession of the views and determination of the Government. You must, doubtless, be well aware with what avidity, in moments of excitement, the support of the local authorities, whose views are assumed to be opposed to those of the Government, is caught at by the disaffected; and that, therefore, special caution is necessary to prevent misconception, which must embarrass the public service, and not improbably lead those who labour under it to commit overt acts of resistance to constituted authorities, seriously affecting the peace of the community, and compromising themselves. As these overt acts have been committed, you will no doubt feel it to be your duty to take every suitable and proper measure to correct any false impression in regard to your sentiments that may have gone abroad. . . . . Operations having been already carried on, with the best result, to a considerable extent, his Lordship is of course determined to push the measure to completion. In itself, it must be productive of good to all honest persons; and those who may think themselves aggrieved by any ulterior proceedings, founded on the data which it furnishes, will have, of course, full opportunity to appeal either to the Court (I may remark that this Court was presided over by the Judge to whom this letter was addressed) to which the Revenue authorities in such cases are amenable, or to lay their complaints before the Government, where they will have due attention. It will be your duty, as a high public officer

of the Government, thus made acquainted with its views and objects, to forward them by the zealous exercise of your influence, and the employment, on all fitting occasions, of the authority which is vested in you.'

"The last paragraph need not be quoted, as it refers to the conduct of some native judicial functionaries. It may again be observed, that the Judge, addressed in the dictatorial tone of the Government Secretary, was the functionary presiding in the Court to which the Revenue authorities are liable; and it may be inquired whether the tenor of the letter cited was such as to encourage the self-possession of the presiding functionary, and tend to his arriving at a prompt and judicious decision in any case between the Revenue authorities and the aggrieved agriculturists? Would the Secretary to Government in any of our Colonies, or the Home Secretary of State, be tolerated in addressing any of the Judges in such a tone? Is it only in remote India that such a tone is to be adopted?"

I submit that I have proved, as completely as can be expected within such limits, that the judicial officers of the Civil Service deserve the epithets I have applied to them as a class, and are unfit for the proper discharge of judicial duties. If they were in all other respects fit for their duties, their want of dependence alone would render them objectionable. The power which the Executive Government possesses over them has never been suffered to lie dormant: it has occasionally been exercised, in cases where the Government was not concerned as a party, to promote the ends of justice, and to compel them to act legally and rightly; but the delinquent official, if a covenanted civilian, has never been visited with condign punishment. The last mail has

brought news of a case in which the effect of a young magistrate's unjust proceedings was remedied by the interference of the Executive Government. This man's oppression nearly stopped the working of a large indigo factory within twenty miles of Calcutta. He crowned his misdeeds by striking one of his head native officers in open court: his punishment was the usual one,—leave of absence until the affair has blown over, and then, no doubt, he will get a better place. The honourable member for Guildford will be able to give you every information about this case.

But if this controlling power of Government is occasionally exercised in the interest of right and justice, how much oftener has it been exercised in its own interest, with the sole motive of its own gain. The resumption robberies have not been confined to Chittagong. In spite of the Privy Council's decision in the Rajah of Burdwan's case, numbers of estates in Bengal have been resumed on precisely the same grounds as were there held to be invalid; and it is hardly too much to say, that in the item "gain by resumptions," mentioned in one of the Blue Books of 1852, you might with propriety erase the word "resumptions," and substitute "larcenies."

I may also remind you that your own relative, Mr. Courtenay Smith, was turned out of office for a decision, which, if the facts have been correctly stated to me, was undoubtedly right in law, and which, whether right in law or not, was one which, in the exercise of his discretion, he had a perfect right to give, and which he would have given in any other country without the least risk of his office. You will also remember, that Sir J. P. Grant, a Crown Judge, was suspended and removed by the Local Government, until public opinion forced his restoration

to a higher and better seat upon the bench. Mr. Lewin, too, one of the witnesses examined before the Charter Committee, was turned out of office for doing his duty as a judge; and I beg you to refer to his evidence, and read the account given by him of the improper conduct and ignorance of his fellow civilians, and the difficulty with which he stopped a series of judicial murders of innocent men: how, in one case, it was proved that a Session Judge, who had recommended a man to be hung, had not even seen the document on which he made that recommendation; and how the Government, upon a representation of the matter, treated it lightly, and simply reprimanded the man; and how, in another case, two judges, who had for years been passed over for incompetence, were with great difficulty prevented by Mr. Lewin himself from hanging four innocent men on the evidence of the real murderers.

Indeed, what can be expected from uneducated men, who are sure of incurring the displeasure of Government if they disobey its hints and decide against its interests, and on the other hand are certain of promotion and support from the Government, whatever may be the impropriety of their conduct, if only they will unscrupulously serve it, when its own interests are concerned? The support of Government is extended in the same fashion to native and uncovenanted officers on whose subservience they can depend. It took eighteen months of ceaseless remonstrance on the part of the residents in Serajgunge to persuade Mr. Halliday to remove a native deputy magistrate, whose incompetence was asserted by the whole district, and the assertion confirmed by the reports of every official in it. Mr. Halliday has never paid the slightest attention to the public remonstrances

which have been made against the inefficiency of the present junior magistrate of Calcutta, a native; though such remonstrances have been continually made for the last two years; and though scarcely a session passes without strong observations by the Judges of the Supreme Court upon the state of the depositions drawn by him. The case is one so flagrant that I shall again quote from the *Englishman* a specimen of the proceedings:—

"On the 19th of May, the junior magistrate committed Kadernath Bonnerjea on a charge of forgery, and held him to bail: on the 28th of May, he committed him again on a charge of embezzling the monies which he received as the proceeds of his successful forgeries, refusing in this instance to admit the prisoner to bail, who, in consequence, appealed to the Supreme Court for his discharge from custody. Mr. Justice Colvile, in granting his prayer, observed, that 'Kadernath Bonnerjea was committed for two inconsistent offences. If the bills, by virtue of which the prisoner obtained the money, were forged, then he could not have received it on account of his master, and consequently the offence of embezzlement could not have been committed.' And it does appear to us that the learning of a judge is not indispensable for the discernment of so obvious a fact.

"Again, he committed a man named Hurrynarain Day for embezzlement: according to Sir James Colvile's charge to the grand jury, this prisoner had been guilty of no criminal offence whatever, 'as far as from the very confused manner in which the depositions had been taken he was enabled to judge.' And now we come to a case which the Judge described as the most preposterous of the kind he had ever met with. It was a

case of rape. One Jaranimo goes to his friend's house, and takes him and a girl, who lives under his guardianship, out for a drive in a buggy; and they finally go to his (Jaranimo's) house. When there, Jaranimo persuades the girl to go into his bedroom, where they remain some time. The friend becomes impatient, and calls to the ravisher that he wants to go home. Jaranimo responds that he had better go, 'as the *missee baba* (little miss) will sleep there that night.' He does go, and the young lady remains a *whole fortnight*, after which she brings a charge of rape against her admirer, whom the native magistrate actually committed to the sessions! The case, however, was so absurd, that, as we are informed, the learned Judge ordered the clerk of the crown not to prepare an indictment."

This article appeared in 1855, and one of the last mails brings papers which contain fresh instances of this officer's ignorance, and animadversions upon it by another judge of the Supreme Court; in fact, the misconduct and the complaints have been continuous ever since the magistrate was promoted from the Mofussil to Calcutta, and his actions came under the eye of the public. To what conclusion can officers, so upheld, come, but that their conduct is of no moment, provided they can secure the favour of the Executive Government?

It was also proved, as stated in the same paper, against the Chief Magistrate of Calcutta, a civilian, about the same time, that he was in the habit of hearing and deciding charges without putting the accusers upon their oath, or proceeding with the proper formalities; that he was ignorant of his own powers, and, in one case, of the capacity in which he was acting; that he actually dismissed a charge against one man, not

have an especial affection; that the Punchayet is an old Hindoo institution, an error which was fully exposed by Sir John Malcolm, and especially by Major Munro, Resident at Travancore, in a report, dated 7th March, 1818.

How are the jury to be appointed? In such manner as the Governor-General in Council may direct, with the consent of the High Court. I suspect that will result in an appointment by the judge or magistrate who tries the cause, with, perhaps, a very limited power of challenge; for in the Mofussil there can only be a limited number of jurymen fit to try a cause of any sort. It is admitted on all sides that Indian juries will be severe, and under the influence of the presiding judge. Unanimity, or a majority of two-thirds, with the concurrence of the judge, is necessary for conviction; but if any number short of the whole are for conviction, the decision will rest with the judge. This is meant, I suppose, as a humane provision; but observe the door which it opens to the exercise of the judge's will. From the acknowledged subserviency and severity of Indian juries, it is probable he will always be able to secure a conviction if he wants it; but if he is anxious, from any reason, to get an acquittal, he has only to bias one man, and he gains his object. Suppose that a man in Mr. Solano's position prosecuted another before such a judge as Mr. Swinton; what would be his chance of getting a conviction?

The provisions as to appeal are also bad. The High Court will be swamped with them. It appears to me that every conviction by a magistrate will be appealed against. It is most important that the right of appeal from such functionaries should be retained, but there

ought to be a provision restricting it to cases where reasonable grounds can be shown for the proceeding.

It seems to me, on re-consideration, that what I have said at page 14, about Mr. Macleod's assertion as to the possibility of the Chief Justice being over-ruled by a native, may be liable to misconstruction. The case, indeed, as put by Mr. Macleod, is sufficiently absurd, and there is less danger that a native judge would overrule the decision of the Chief Justice, than that he might be overruled by a civilian.

But there is a defect, or rather an omission, and a very important one, in the provisions of the code, of which this observation reminds me. There is nothing to show what majority of the High Court is to be competent, in cases of difference of opinion, to give a final decision; and, consequently, it is easy to conceive a case in which one uneducated judge of the High Court might overrule the whole three judges of the Crown.

For instance, suppose that three of the judges of the High Court sat as a Court of first instance, consisting of two Crown judges and one civilian. The civilian differs in opinion from his colleagues, and the case is appealed to the High Court, which I will suppose to consist of the Chief Justice and two more civilians. The Chief Justice is for upholding the decision of his learned brethren below, the civilians for supporting their unlearned brother; the verdict, therefore, of the third civilian in such a case will overrule the three Crown judges. If, again, one civilian only should dissent, what is to be the result, for it is not stated whether unanimity is necessary in the High Court or not? If unanimity be considered necessary in the Appellate Court, as I conceive it ought and must be, the dissension of

one ignorant man will nullify, in the case put, the decision of four men. And it is obvious that this may happen when the point for decision is a case of pure English law, of which the best civilians must be, in a great measure, ignorant; as, for instance, an intricate question of commercial contract or wagers, such as the well known Opium cases; and thus, by the obstinacy of one uneducated man, a wrong decision, affecting millions of money, may be pronounced, notwithstanding the numerical and intellectual superiority of his brethren. If, again, a majority, in a court of eight judges, is to determine, it is obvious that they may be equally divided, supposing the whole of them sit, and in that case no decision can be come to; or if the number be raised to nine, or consist of a lower uneven number, you may again have one unlearned man overruling all the learned ones, or else the anomaly will arise that the decisions of the Court of Appeal will not be final.

Such are some of the difficulties attendant on an attempt to amalgamate ignorance and learning. I think, however, that the settlement of all such minor objections may be left safely to the local Legislative Council, and to such men as Mr. Peacock and the Judges of the Supreme Court. I wish I thought the leading principles could also be entrusted with safety to their discrimination; but I do not think so, and I will state why I entertain that opinion.

The Judges of the Supreme Court, during the time that I held office in it, were three as learned lawyers and upright gentlemen as ever sat upon a Colonial Bench; and I shall ever speak of them, not only with the respect due to their high station, and with professional reverence for their learning, but with personal

gratitude for the kindness invariably shown to me during the years that I had the honour to be their servant. I do not hesitate to say that, all things considered, they were fully the equals in learning of their brethren in England. But I am perfectly certain that they have no conception of the state of the country without their jurisdiction. Their high station prevents their mingling, to any degree, with non-official classes; and even if they could do so, those classes would not speak without reserve before such high officials. The very conscientious diligence with which they discharge their laborious duties prevents their acquirement of any personal knowledge of the country. Their knowledge of it is drawn almost solely from their conversation with high officials of the Civil Service. Moreover, two of the judges now are, and have been for many years, ex-Advocate-Generals of the East India Company. I cannot believe that men who have once canvassed the Court of Directors for their appointments, who feel that they owe their fortune and station to that body, and who mingle chiefly with men similarly circumstanced, can be entirely free from a bias in favour of the Government. I know that such a bias could never affect their decisions as a Court of Justice, but I am convinced that, however unconscious they may be of it themselves, it must and will affect their political views. Many of the most illustrious judges of England have given instances of a political bias, and so have the predecessors of the present judges of India. I cannot forget that two judges and Mr. Peacock were in Council when the Affray Bill was discussed—an enactment of which the atrocity was only equalled by the grammatical blunders and legal ignorance with which it was drawn—that they all appeared

to approve of the principle of that measure—and that Sir James Colvile made a sort of soothing speech in Council upon it, in which he showed that he entirely misapprehended the grounds upon which the public founded their objections to it. It is true that Mr. Justice Buller is now in Council, who was never an Advocate-General of the East India Company; and a long personal intercourse with him has given me so deep a respect for his wisdom and liberality, that upon him I should most confidently rely, had I any belief in his possession of a tithe of the knowledge of Mofussil matters which I myself possess. But I know the contrary to be the fact, and that he is not in this respect superior to his colleagues. I fear, therefore, that they will not offer a sufficiently stern opposition to some of the politically objectionable parts of the code, which the other Members of Council will, I am sure, approve, and strive to enact.

The real rulers of India, as far as concerns internal administration, at least, are the Government Secretaries. The Governor-General, when first appointed, must rely upon them, from his ignorance of the country; the reliance upon, and reference to, them generally become habitual; and just as the Governor-General acquires sufficient knowledge to act independently of them, his term of office expires; and during its continuance his attention is generally directed solely to what are called, by a singular perversion of terms, "Imperial matters." Lord Dalhousie, I am sure, had never inquired much into the state of law or of police; his attention was so much occupied with making war, and putting kingdoms into his pocket—operations which did not bring him within the power of these charming establishments—that he

forgot others were subject to them. I am confident that if he had known their state and effect, he would have found a remedy for the misery they produce. But as to the internal state of the country, the Governor-General is always kept as much as possible in the dark. We have Lord Ellenborough's own statement that he knew nothing of the existence of torture; and yet almost every other man in India was as conscious of the fact as of his own existence. The last Governor-General who devoted his time to the examination of the judicial evils was the great and good Lord William Bentinck—the man to whom is due the fact that there is now a single Englishman to be found in India. It is high time we had another Governor-General of his temper and calibre. Most of his important measures were carried in the teeth of the Court of Directors; he thwarted them whenever opposition would tend to the benefit of India, or the interests of the Crown; and they took very good care not to give *him* a pension. His opinion of the police and courts was such, that he deliberately "abandoned one of the legitimate functions of Government—inquiry into thefts and burglaries. He had heard and was convinced, that the people of Bengal suffered more from the police officers than from thefts and burglaries, and he put a stop to one of the fruitful sources of legalized oppression by enacting Regulation VI. of 1832."

I beg you, Sir, to remember also that Lord Campbell, in 1853, expressed his opinion of the Courts of the Company in language which he would not have employed had he not been sure of its truth. It was upon the occasion of Lord Ellenborough's presenting a petition from Madras:—

"The noble Duke who had spoken in the course of the debate (the Duke of Argyll) had, he thought, been somewhat prudish in his criticism on the phrases which had been used by the natives of India in describing their grievances; it was not reasonable to expect them to be very mealy-mouthed: and, for himself, as far as regarded the administration of justice in the interior courts, he thought no language could be too extravagant in describing its enormities."

It is easy for the Postmaster-General, sitting serene on the cozy benches of the House of Lords, to cast a classically critical eye on the productions of half-ruined men. But if he were in a situation similar to that of a man like Solano—if the revenues of the house of Argyll depended on the cultivation of clover and corn; if those domains were surrounded by large breeders of horses and cattle, and each morning saw numbers of these quadrupeds in the Argyll crops; if the neighbouring justice of the peace would not listen to his Grace's complaints, or gagged and fined him for making them, instead of impounding the voracious animals: then, when he saw poverty staring him in the face, and the heritage of the future little Macallum More vanishing partly into equine and bovine bellies, partly into the pockets of the police and of the clerk to the justice of the peace; then, I must say, I think his Grace of Argyll would be seen rushing about, *passis capillis*, invoking the gods, and denouncing his enemies in the strongest terms with which his vocabulary could furnish him. I even deem it possible that he might occasionally be heard to swear.

Or, again, if he attempted to right himself by the strong hand—if he assembled his clan, buckled on his claymore, bid his pipers strike up "The Campbells are coming,"

and made a swoop down upon the intruding cattle—then, if he had to deal with an Indian magistrate, administering the late Affray Bill, he might find himself summarily fined five million pounds, and sentenced to imprisonment for 200 years. Nay, he would very likely find himself in the same predicament, though he had never stirred out of his house, if any of his neighbours thought it worth while to bribe the police, and to suborn testimony against him. And, under the bill quoted, he would have no power of appeal.

This specimen of Indian legislation was introduced into Council while Mr. Peacock and two judges were members of it.

The cry of the Indian public for redress, accompanied by complaints against the officers, the police, and the courts, and proof of their incompetence and abuse of power, has always been answered by nothing but a proposal to increase the powers of these courts and police: and it has then taken a long and expensive agitation to convince the Government that this curious *sequitur* was objectionable.

To these courts, in their desire for uniformity, the Commissioners now propose to subject Europeans. I have been asked, with an air which showed my interrogator's belief that his question was unanswerable, "If a native were to say to you, 'What right have you to be exempt from the jurisdiction of courts to which I am subject—what answer could you make?" I answer, "Considered politically, my sable friend, our right to be well governed does not rest on the same basis: you are one of a conquered race, who have therefore no original and strictly political right to be well governed: you are at the mercy of your conquerors. But I am one of a

nation who have their rights guaranteed by such things as Magna Charta, the Bill of Rights, the Act of Settlement, and a few other conditions, upon whose due and faithful observance by the Crown my allegiance to it depends. I cannot, therefore, admit that you are politically my equal. But your right to be well governed, I nevertheless admit: it rests upon a higher basis—upon moral and religious grounds, upon which a Christian nation is more especially bound to build its government—upon principles which should lead it to follow the golden rule of doing unto others as it would be done by, and to seek the peace and well-being of all its subjects. But you admit that the courts to which you are subject only add to your misery and disturbance; how will my subjection to them improve your condition, or conduce to peace and order? I will do all I can to raise you to my advantages, and that is a better way of giving us the desired equality in the eye of the law: what you desire, or rather, what the civilians pretend you desire, would simply reduce us to an equality in lawlessness and misery; and against these evils it is the duty of our Government to guard."

The truth is, that this argument of my interrogator contains a fallacy which is not inapt to charm the unthinking, but which conceals the very essence of Socialism. What would become of us if any wretched creature could claim a right to reduce every one to his own level? A healthy, wealthy, tall, and handsome man might start for a morning walk eastwards from Hyde Park, and if the levelling wishes of those he met could be at once carried into action, he would find himself maimed, ruined, and afflicted with every disease in the world, before he got to Temple Bar. "He is six feet high," one would shout; "I am only five; compress him a foot." "His

face is smooth," another would cry; "mine is pitted; pit his too." "He has a handsome nose; mine has a polypus; let his be similarly afflicted." "I have a 'shocking bad leg;' he must have one too." "The rascal has £10,000 a-year; I have nothing—'Halves!'" One hour's walk in the streets of London, and not homœopathy, nor hydropathy, nor mesmerism, nor even Holloway's pills and ointment, would effect his cure. Nothing but a motion for a writ of *habeas corpus* (supported by proper affidavits) would have a chance of restoring him to his former self.

Is this sound policy, or sound morality, or good religion? There was once a Reformer upon earth whose will ever found immediate fulfilment, and whose maxims Christian England professes to follow; and when blind Bartimeus sat by the wayside and cried his woes to Him, He answered the prayer, not by the deprivation of others' happiness, not by the infliction of darkness upon the rest of the multitude; but by widening the scope of human enjoyment, and bestowing the ineffable blessings of vision upon the clouded eyes of the Hebrew beggar. I would earnestly pray our statesmen to go and do likewise.

If you do not believe my assertions, you can apply to Mr. Theobald, who, though a private gentleman, comes as the representative of the whole non-official European population of Bengal. There he is, overflowing with evidence, and ready to answer any amount of questions. It is a notable fact, that that population were so alarmed by the proposed measures of judicial reform, that a few—I think about twenty—subscribed at once upwards of £2,000 to pay the expenses of their delegate to England. If, after hearing him and reading me, you are still unconvinced, let us have what we have so often demanded—what the

missionaries now, too, with the best motives, but most mistaken impressions, join us in demanding—a Royal Commission to India. Nobody dreads it but the East India Company. If it is issued, and discharges its duties faithfully, and men are assured that they can give their evidence without the certainty of ruin from the vindictiveness of the civil officials, I will pledge my honour —I would pledge my life and fortune—that you will get a mass of evidence that will absolutely appall you.

All this will very likely be denied by the men who represent the East India Company at home; but they will deny anything that tells against them. It should never be forgotten, in weighing their testimony, that (to put their evident interest out of the question) they come before the public doubly and trebly convicted, either of the grossest ignorance, or of wilful falsehood. When it was proposed to destroy their commercial monopoly, they raised such a cry that one would have thought the world was coming to an end upon its destruction. The government of India could never be carried on without that monopoly; the territorial revenue showed a sad deficit; and the Government only continued solvent through the commercial gains: nay, the commerce with India would die away with the monopoly. The accounts were investigated by Mr. Wilkinson, and it was found—proved beyond the possibility of refutation—that these assertions were not only not true, but the direct opposite of truth; that their commerce was a loss; their territorial revenue the one which showed a surplus, and supported their commerce. The monopoly was destroyed, and the commerce has so increased, that the Hooghly can hardly hold the shipping.

They made the most terrible uproar about the immi-

gration of Europeans into India, and vilified their conduct most outrageously. It would, to quote Mr. Macleod's words, "upset the whole basis of the British power in India." Lord William Bentinck inquired into the matter, and told them in reply, "That the whole of their objections rest on a train of argument, in meeting which the chief difficulty is that of so stating it, as to bear the semblance of sound reason."

They denied the existence of torture,—Mr. Mangles and others flatly, Sir James Hogg impliedly. The first mentioned gentleman had indeed "heard of it in certain matters of police, but he could solemnly declare he had never heard of anything of the kind in connection with the collection of the revenue." As if it is possible to believe that a man capable of reason, who knew the police were in the habit of torturing for confession of crime, and who knew that the same police were the collectors of revenue; and who knew the difficulty of collecting that revenue; could help knowing, whether he had "heard" it, or not, that they would resort to torture on the first difficulty! But Sir J. W. Hogg—that far-seeing man—was much too cunning to make any denial of the practice; he probably saw that public attention was roused to the pitch of action, that an inquiry would be made, and knew what the result would be. He, therefore, did not deny it: he simply contented himself with abusing Mr. Danby Seymour for asserting its existence. Let no one deprive him of the honour of the distinction, whose value he had the astuteness to perceive.

Indeed, that Torture Report, and the curious contradiction between the official assertions and the evidence in the appendices, would lead one to believe that there

is something in employment by the East India Company which destroys the perception of truth. I may mention a little story which rather tends to confirm this view. There was, a couple of years ago, a squabble about an appointment in Calcutta between the Lieutenant-Governor of Bengal and the Governor-General's Private Secretary. It led to a rupture between these quondam friends. Of course, such an occurrence was greatly discussed in that Eastern little Pedlington; various reports got about; and the Private Secretary printed and circulated his version of the cause. Somehow it got into the papers; and the *Friend of India* took up the defence of Mr. Halliday, of course, as he was a civilian. Unfortunately, that paper could not deny that Mr. Halliday had told a fib; so it excused the little slip, and on these grounds, and in these words:—

"It was an act of official equivocation, which we can only account for by a reference to the circumstance of Mr. Halliday's having breathed too much of the parliamentary and official atmosphere of England during his residence there."

It really did,—it accused you all, my Lords and Gentlemen, of being such infectious liars, that a few days passed in your company served to upset Mr. Halliday's notions of truth. I cannot help thinking, if this be true, that the attack must have seized him very early in the delivery of his evidence before the Charter Committee.

But, deny it who may, the further you push your inquiries, the more firmly you will be convinced that the Europeans will not trust their capital willingly out of the jurisdiction of the Supreme Courts; that the badness of the Company's Courts has hindered, to

an enormous degree, the immigration and enterprise of Europeans; and that an entire subjection to these tribunals will drive them out of the country. The amount of inconvenience arising from their exemption is very small. In the Memorial against the Black Acts it is stated, par. 17,—"When an inconvenience is alleged, from which such grave consequences as the disfranchisement of the whole body of Englishmen in India, their disherison of their own laws, and the denial to them of trial by jury and by competent courts, are to follow, it should at least have been stated in what it consisted, and what was its extent, for fraud lurks in generalities. We seek in vain for proof of its magnitude and reality. We find that the reality is that such alleged inconvenience has hitherto been exceedingly trifling and insignificant. We undertake fully to prove this by evidence. In the space of the last nineteen years, out of the total number of thirty-five British subjects committed for trial for offences of all kinds, within this Presidency (Bengal) beyond Calcutta, only seven can be shown to have been sent from a greater distance than a hundred miles, and the expense to Government must, therefore, have been utterly insignificant. The establishment of railways, the improvement of the navigation of the Ganges, and of internal communication generally, will greatly diminish this inconvenience, small as it is."

I am delighted to see that the attention of the cotton manufacturers is being turned again to India as a cotton field. In the debates which have already arisen this session in the House, you, Sir, have attributed the non-cultivation of cotton in India to the want of railroads and roads. Undoubtedly these are grave objections; but the main causes are the impediments thrown

in the way of European enterprise by the East India Company, by the conditions they impose upon the tenure of land by Europeans, and by their revenue system, and the state of their laws and courts. Depend upon it, if Europeans had been encouraged to cultivate cotton, they would have got it to the sea-ports somehow or other. I extract and refer you to a portion of the letter of the Bombay Chamber of Commerce, published in the Cotton Committee's Report :—

Extract of a letter addressed to the Government of Bombay, by the Chamber of Commerce at that Presidency, on the subject of extending and improving cotton cultivation in India, 1841.

"Notwithstanding the last Company's Charter rules that British subjects may hold lands in any of the old British Indian territories, the terms which in your letter of the 30th May, 1840, you communicated to the Chamber, as those on which alone the Court of Directors permit land to be granted to persons desiring to engage in the culture of coffee, cotton, and other products, wholly exclude a real *bonâ fide* tenure. The Court, in the despatch therein quoted, expressly forbid Europeans from being allowed to purchase the land out and out; all that is permitted is a lease of years, and the utmost extent of lease, under any circumstances, is fixed at twenty-one years. The land is, moreover, rendered liable to seizure, and the lease to forfeiture, at the discretion of the collector, and no judicial appeal is allowed; the only appeal is to the Board of Revenue (whose functions in the Presidency the Committee suppose are exercised by the Revenue Commissioner), and the decision of that Board is to be final. On such a tenure the Committee think few British subjects will be found to risk

their capital. Independently of the provisions regarding the Collector and the Board of Revenue, the shortness of the tenure is in itself an insuperable objection; for it takes away from the settler the fruits of his labour—his time and money, possibly just when they are beginning to ripen, and leaves another to reap where he has sown. Nothing short of the absolute and perpetual property in the land (subject, of course, to a fixed rate of taxation) will give that confidence which is necessary to cause capital, time, health, and labour to be freely expended upon it, and, when that possession is given, these will probably not long be wanting. The present flow of capital to Ceylon, and the great progress already made there, in converting the forests of Candy into flourishing coffee plantations, is a proof of this."

(The Cotton Committee's Report. Appendix No. 5, p. 513. Printed by order of the House of Commons, 17th July, 1848.)

Are you well acquainted with the result of Mr. Shaw's energetic promotion of cotton cultivation in Dharwar?

Do you know that he produced, in spite of the opposition of the money-lenders, excellent cotton, equal to the second quality of the American cotton, and at a price with which America could not compete?

But the moment Mr. Shaw left, the Government allowed the thing to lapse, the money-lenders resumed their power over the ryots, and there was an end of the matter. The *Times* lately, in a striking article, foreshadowed the effects of a possible failure of the cotton crop in America. If that evil day for England should come soon, it will be a happy day for India: then all these things will be inquired into, and their causes dis-

covered; then they will build statues and get up testimonials to Colonel Arthur Cotton, and others who have laboured zealously and thanklessly for the true interests of India; then the British Lion (commercial) will wag his tail, and roar; then ruined Manchester will arise in its wrath, and (I hope) hang Messrs. Hogg, Mangles, and Melvill in cotton twist. Let us fervently pray that the then President of the Board of Control may not share the same fate.

It should also be remembered, that by the promotion of cotton cultivation in India, you will strike a deadlier blow than has yet been given to negro slavery.

The power of the East India Company over European settlers as to the right of deporting them from the country, and refusing them entrance into it, is involved in some doubt. Professor Wilson, in his history, denies the existence of any such power. But I think that learned historian is mistaken. The statutes are not very clear. My own opinion is, that the law upon this point is rightly stated by Mr. Dickinson, in his pamphlet on "Indian Government." There can be no doubt that the intention of the Legislature, in its more recent statutes, was to destroy the power of deportation; but I do not think those statutes have accomplished that object. The question is now awaiting the legal decision of the Supreme Court of Calcutta, and the time it has taken to consider its decision shows the difficulty in which the matter is involved. I hope when the judgment is delivered it will be broad and clear, beyond the possibility of doubt or cavil; and if, as I am inclined to think, it will rule in favour of the Company's right of deportation, the Legislature should step in and destroy it by a special enactment; and if the

Penal Code be unhappily passed, the chapter on Illegal Entrance should be struck out.

It may, perhaps, be asked what remedial measures I would myself propose for the evils I have described? Yet it may be deemed presumptuous in me to offer any suggestions, and I should hardly venture to do so, were my views not supported by the opinions of men whose right to attention is beyond question.

The main reform which I would propose is the employment at once to the largest extent practicable, throughout the country, of properly educated judges, chosen from barristers and advocates. This has been recommended by two judges, Sir Erskine Perry, who knows more of the internal state of India than any other Crown judge, and by Sir E. Gambier. Sir Edward Ryan, too, did not dissent from the advisability of the plan, but doubted its feasibility; he thought you could not get barristers to take the places. I am quite sure that if he were as well acquainted with the state of the profession, both in England and India, as I am, he would alter that opinion. Perhaps he founded it on the extraordinary assertion of Mr. Halliday, that barristers in Calcutta are making, on an average, £3,000 a year. This is the most preposterous mis-statement I ever read, even in Mr. Halliday's evidence. Three men at the Calcutta bar make from £5,000 to £8,000 per annum, one of whom occasionally makes as much as £10,000. About four more make a comfortable competence, and the rest manage as well as they can until they get places. There are some who make nothing at all by their profession. In fact, it is just as much a lottery as it is in England. It is a bar which requires peculiar and diverse qualifications; and there has been more

than one instance of a man leaving an excellent rising practice in England to go to the Calcutta bar, in the vain assurance that he must make his fortune there, and finding, to his great astonishment, that he could not make enough to pay house-rent. In fact, six years ago it was probably the ablest bar, for its numbers, that was ever seen. The leaders were not inferior, as the judges declared, to the leaders of England. Wherever there are three or four such men, you may be sure there is a large proportion of briefless waiters on Providence.

I am perfectly certain, that if you offered to pay their passage out, and give them £600 a year until they passed the civilian's examination in native languages, and £1,500 upon their passing, with the chance of elevation by merit to the Sudder bench, you would get as many English barristers between twenty-five and thirty-five years of age as you wanted. An ordinarily clever and industrious man would, I am sure, pass the first examinations of the civilians in three months; indeed, I believe some of the first civilians who entered the service under the new competition system passed it in one or two weeks! And yet this is the marvellous knowledge of native languages, the want of which in English barristers has so often been declared by the East India Company's officials to be an insuperable bar to the employment of English lawyers. But you must, of course, take care to assure English lawyers that they will have fair play in the race for the higher seats of the Sudder bench.

The object of the East India Company has always been to keep lawyers out of the country, because their learning and fitness for their duties afford a too painful

contrast to the ignorance of the civilians; and because, in Calcutta at least, the bar has always exposed, and stopped by public agitation, the grosser absurdities of their legislation. They have shown the greatest hostility to the profession, ever since they were defeated in their attempt to keep the bar also a closed nest for their own patronage. Their cry against lawyers has been always the same as that of Dick the butcher, in his little request to Jack Cade—"The first thing we do, let's kill all the lawyers." "Any law you please," say the civilians, "Mahomedan or Macauleian; but, for God's sake, no lawyers!" Their coyness, like Kate's, in the song of drunken Stephano, is confined to a class:—

"The master, the swabber, the boatswain, and I,
The gunner, and his mate,
Loved Moll, Meg, and Marian, and Margery,
But none of us cared for Kate;
For she had a tongue with a tang,
Would cry to a sailor, Go hang!
She loved not the savour of tar nor of pitch,
Yet a *tailor* might scratch her where'er she did itch;
Then to sea, boys, and let her go hang."

So, according to the East India Company, every sort of person—I think a railway engineer was Mr. Halliday's last elevation to a judicial office—is fit for judicial employ except a lawyer.

I am no bigoted admirer of my own profession, but I confess my difficulty in meeting these objections is identical with that of Lord W. Bentinck in refuting the arguments against immigration—so to state the case of my opponents as to bear the semblance of reason. Do you go to your hatter for boots, and to your butcher for hats? Do you ask Kelly to take the stone from your

bladder, and Brodie for his opinion upon the title of the property you want to purchase?

Every occasion has been seized on to circumscribe the jurisdiction of the Supreme Court, and now an attempt is made by the proposed code to take away, in a great measure, the independence of its judges. Mr. Halliday made the modest proposition to abolish the Supreme Court, and substitute for it the Sudder, with one presiding English lawyer. This proposition, to my mind, is conclusive as to the value of Mr. Halliday's evidence on all judicial matters. A counter proposition has been made, I am informed, by others, to retain that court in its integrity, and to appoint an English lawyer to preside over it. It is said to have the approval of the Crown judges. But there are, in truth, now *three* Sudder Courts. It consists of nine judges, who sit in batches as different Courts, and show their fitness for their office, according to the *Friend of India*, by diametrically opposite decisions:—while Messrs. Brown, Jones, and Robinson are laying down the law in one room as black, Messrs. Green, Stokes, and Nokes are laying it down as white in another room. Yet these decisions are of equal weight, and you can imagine the confusion they cause through all the courts of the country. It is evident that one man cannot keep three courts in order; it is clear there must be at least three fit men appointed. But why is even one wanted? To keep the ignorance of his colleagues in check by his learning. When we catch a wild elephant in the jungles, we secure him between two tame ones to keep him quiet; but here is a proposal to tie one sober and deliberative lawyer to eight wild and hasty civilians. If his learning could have any valuable effect upon their legal decisions, could he

check them in their subserviency to the Executive Government, if, as stated by Mr. Robinson, they were to hold secret instructions as to their decisions, and be threatened with suspension and removal from office in case of contumacy? Is it certain that he would offer much opposition, when he himself might be turned out of office by a stroke of the Governor-General's pen? Let it not be said that the Government would never make such suggestions. They made a most improper request to the Judges of the Supreme Court, during my tenure of office; and I myself as the confidential clerk of Mr. Justice Buller, drafted the reply which conveyed to the Government the firm refusal of the Judges to comply with that request. I hope and believe most men would do their duty, even at the risk of office: but why subject them to such a trial? Why place such a power in the hands of a nearly irresponsible Government? "The eternal governing principle of the British Constitution," said Lord Lyndhurst in the most memorable debate of last year, "is jealousy and not confidence, and the principle upon which I proceed—the old constitutional principle—is, that I will give the Crown no power which is capable of being abused, unless some great and over-ruling necessity can be shown to exist. I look with all constitutional jealousy, and not with confidence, to those who are the depositories of power." Surely this applies with tenfold force to the servant of the East India Company, as the Governor-General undoubtedly is, who has a pension to gain by obedience to their wishes.

Eighty years ago, Lord Erskine, when counsel in a case against the Government, said to the Court of King's Bench, "I know that your Lordships will decide accord-

ing to law, for the torrent of corruption which has overwhelmed every other part of the constitution is, by the blessing of Providence, stopped here by the sacred independence of the judges." That independence is as sacred now as it ever was: you must be aware that an attempt to destroy it here would raise a rebellion, if persisted in. It would be a grievous shame if it should be attempted in India. The Judges of the Supreme Court and the Sudder, at any rate, should hold their offices on the same tenure as the Judges of England. And on the very same ground upon which the introduction of one competent man into the latter court is proposed, I contend that ultimately all, and half at once, of its judges, should be selected from professional lawyers of some standing.

Every darogah should be an European, or half caste of the highest respectability. Every native of that class and station *will* torture upon the slightest difficulty.

Establish a Supreme Court at Agra. Pass the *Lex loci* as proposed by Mr. Lowe and Sir John Jervis. This measure does not rest on their recommendation alone.

I have advocated the bestowal upon natives of the right of eligibility to a seat in the highest court, chiefly because I think it will induce a much higher class of men to enter the judicial service. But the greatest care must be taken in their elevation. It must not be forgotten, that though many of those now in the service are well qualified in point of knowledge of regulation law, few of them are of very high character. I have taken the greatest pains to collect evidence on this point; and I find the evidence nearly unanimous in favour of the opinion expressed in the following extract of a letter from a planter of great experience:—

"I have known numbers—the great majority—of

native officers on the bench, who would not take money bribes: but I never knew one who would not obey the least hint of the Government officials, or of any very high caste man of their own nation, whom they very often respect more than the Governor-General. I have, I confess, myself used my influence with a man of the latter class successfully to induce a former native deputy magistrate of this district to give me fair play, when the civilian magistrate was doing everything he could to ruin me."

Let them have the chance of a seat, I say, on the highest bench; but let them clearly understand that they will have no favour in the struggle for that seat; that they will only gain the elevation if they are really superior to their white competitors. Let us have no more such specimens of incompetent men kept in office in spite of public opinion, as those previously quoted. Such a system tends to exasperate everybody, keeps the best men from seeking judicial employment, and makes all in it subservient and desirous only of securing the favour of the executive Governors.

Separate at once the judicial and executive functions. I know the opinions of Messrs. Halliday and Macleod are against this suggestion. But they are contradicted by men of much greater authority, and they advance but two arguments in support of their views—that it will weaken the Executive Government; which cannot be if the Government mean only to enforce their just claims—and that the civilians will be treated with less respect: they are now approached and treated with more adulation than our Protestant forms of worship permit to the Deity. It would do them no harm to learn that they are ordinary and fallible mortals.

Amid the mass of testimony by very distinguished men against the union of judicial and executive functions now existing, I shall quote two men, Lord Wellesley and Mr. Fullerton, probably the ablest civilian who ever went to Madras, and who was Member of Council there: he says;—

"The situation of judicial servants must be considered in another point of view. Judges are called upon to decide between Government itself and its subjects; to secure impartiality they must be free from bias, from the fear of losing their office thereby. No confidence can be placed by the public in the decisions of a judge holding an office only *durante bene placito;* the principle of *quamdiu se bene gesserint* must be scrupulously observed. The dismissal of a judge for a judicial opinion subverts the whole constitution of the Government. It is essential that distinct charges, judicial inquiry, and full hearing, should precede the dismissal of a judicial officer." And I would add that the inquiry and verdict should be public.

Here is the Marquis Wellesley upon the same subject.

Letter from the Marquis Wellesley, from Bengal, 31st December, 1799, to the Madras Government:—

Para. 115. "It is of essential importance to the security of private rights and property that a clear line should be drawn between the executive and legislative authority of the Government in India. The Governors in Council of the several Presidencies must necessarily act in both these capacities; the regulations in Bengal subject certain acts of Government in the executive capacity, as well as those of its officers, to the cognizance of the courts of justice, the judges of which are bound

by solemn oaths to administer the laws impartially between Government and its subjects.

116. "By promulgating in print all our Legislative Regulations, and by subjecting Government itself, in its executive capacity, to the operation of those regulations, we afford to the inhabitants of these provinces the best security compatible with our situation in the country for the enactment of salutary laws for the protection of the person, rights, and property of the subject, and for the due administration of the laws. In addition to the check imposed on the legislative power by the publicity of the proceedings, those proceedings (as observed by your Board of Revenue) come regularly under the inspection of the public authorities at home, who thereby possess the means of an efficient control."

Letter from Marquis Wellesley to the Madras Government, 19th July, 1804.

18. "The most solemn and sacred obligations of the Government towards its subjects demand that just laws should be enacted and established for the general protection of the persons, rights, and property of individuals, and that judicial establishments should be provided, adequate to secure the prompt and impartial administration of the established laws. The new form of the internal Government provides for those salutary objects.* Experience of the happy effects of this system in other parts of our empire in India warrants a reliance that its introduction into the possessions in question

* Note by Mr. Fullerton. "Unfortunately, these establishments have not been adequate. Want of means had cramped their operation, produced imperfection, and imperfection has been urged in condemnation of the system."

(This is even truer now.—T. H. D.)

will promote the extension of agriculture and commerce, the increase of private wealth, and the permanent establishment of private security and public tranquillity, according to the degree in which those salutary effects may be produced; the sources from which the public revenue is derived will be augmented, and the means of obtaining a just proportion of the wealth of the country for the use of the State will be facilitated and improved.

19. "Instead of delaying the institution of courts of judicature; instead of suspending the authority of those already constituted; *instead of confounding all the powers of Government in the person of a Collector of Revenue*, the judicial authority should be strengthened by equitable regulations; justice and mercy should temper the severity of power; and the control of fixed law should manifest the certainty of protection to the lives and properties of our obedient subjects, while regular authority, sustained by sufficient force, should display an equal certainty of punishment to lawless violence and rebellious resistance. Were it possible for the Collectors of the Revenue to appropriate a sufficient portion of their time to the administration of justice, and to the maintenance of the peace of the country, the nature of their duties as officers of the Revenue disqualifies them for the discharge of judicial functions. The people cannot repose a firm confidence in the protection of the laws, while the administration of the laws shall be entrusted to the Collectors of the Revenue, because the conduct of those officers, and of the native agents and servants acting under their authority, necessarily forms a principal object of legal control." After stating that unless these principles were acted upon the system of administration would be no better than that of the

Native Governments, the Marquis Wellesley proceeds :—

25. "Under the most favourable exertions of individual talents and integrity, such a system must produce public and private oppression and abuse. It provides no restraint upon the exercise of power sufficient to ensure the uniform, impartial, and general operation of the laws, and to inspire the people with a sense of confidence and security in the ordinary conduct of private transactions, and in the undisturbed exercise of private rights. Exempt from those salutary restraints, the public officers may pursue a course of evil administration in many of the subordinate departments of the State without the knowledge of Government; and the Government may continue ignorant of the abuse of its name and power, until private distress and personal suffering shall compel the people to combine against the authority whose name and power have been perverted for the purposes of vexation and oppression. In this condition, open resistance affords to the people the sole mode of appeal to the justice of Government. To that dreadful appeal the most peaceable, industrious, and dutiful people must resort, whenever the laws shall afford no regular organ to convey the complaints of the subject to the ear of the Sovereign. Under such circumstances, it is to be apprehended that the resistance produced by the oppression of the State, or of its officers, may be ascribed to disaffection in the people, and the Government may be reduced to the necessity of vindicating its authority at the expense of its character for justice."

And in consequence of the systematic disregard of these nobly worded principles, we had the Santhal Insurrection, which has already cost the State at least a

million sterling; for these savages—cheery, laughing fellows, as easily ruled as children—were driven to rebellion by the exactions of the subordinate revenue and judicial officers; they did enormous damage to all the European settlers in their districts; the Government refused the slightest compensation even to men who aided them in every way, and though their own troops did nearly as much damage as the Santhals; and the *Friend of India* had the impudence to assert that the insurrection arose from the erotic regards cast by railway servants and planters on the Santhal women; creatures one degree less hideous and ten times filthier than chimpanzees; with any one of whom her lawful lord would be delighted to part for a consideration of two rupees a month; and the very thought of amorous relations with whom makes the flesh creep.

I am half afraid, Sir, that my statements will not be believed, and yet I have carefully restricted myself to a very mild revelation of the judicial evils of India. I have always said that if those evils had been a tithe of what they are, a remedy would have been found for them long ago. But they are so atrocious, so incredible, that their description generally gains for the author the character of a Munchausen. It has often amused me to see the terror my many informants have one and all expressed, when I have begged to be allowed to publish their facts with their names. They knew that they would be an object of persecution by the great majority of officials in their district—in short, would be ruined.

However, I can only repeat, that I have but lifted a corner of the curtain; and you will find that assertion correct, if you will only inquire into the matter. No doubt it will be denied; but really there are two mem-

bers of the House of Commons, who are called the members for Honiton and Guildford, but who ought to be called the members for the bewilderment of the House upon Indian topics. Whenever an enthusiastic member, who has never been in India, and has not the archives of the India House at hand, gets hold of a little bit of Indian grievance, then I know I shall soon see the comely presence of the member for Honiton rise in his place, and with fluent elocution, exquisite tact, great sophistical skill, some perversion, and no small suppression of truth, he will puzzle the honourable House; he will also lay a trap for Mr. Murrough, who will fall plump into it. Then the not so comely presence of the member for Guildford will rise in *his* place, and talk against time, with less tact and less skill, and will drive the honourable House frantic with boredom; and I shall read in the *Times* next morning that "the subject then dropped." But it is really high time that some one was listened to on the other side.

In the haste with which, among other avocations and many distractions, this letter has been written, it cannot be expected that I should have done more than hint at the objections to the scheme I oppose, or the remedies I suggest. I hope, however, that I have said enough to set other more powerful and abler men thinking, and to indicate the dangers of the scheme proposed.

I think, in all humility, that if the main principles I have advocated are followed, you would improve the internal state of India, increase European immigration, and consequently, extend your commerce and augment your revenues; and that you would advance far in the way of obtaining some law and order in the country, and some justice, very different from that Indian justice

whereof Mr. Macleod is enamoured. Seventy years ago the eloquent fancy of Sheridan painted Justice as one "whose countenance was ever placid and benign; whose favourite attitude is to stoop to the unfortunate—to hear their cry and to help them—to rescue and relieve, to succour and to save: majestic from its mercy, venerable for its utility, uplifted without pride, firm without obduracy, beneficent in each preference, lovely though in her frown."

But the thing which went by her name in India he denounced "as a disgusting caricature—a halt and miserable object; the ineffective bauble of an Indian pagod; the portentous phantom of despair; like any fabled monster, formed in the eclipse of reason, and found in some unhallowed grove of superstitious darkness and political dismay."

This is as true at the present moment as it was when the old men of to-day were at their mothers' breasts. Indian justice might now be pictured as a hideous harpy, scouring the land, while the terror-stricken population fly before her; her right hand wielding the instruments of torture, her left hand grasping the pice wrung by their agency from the agonized ryot. Her favourite attitude is to stoop to the unfortunate to clutch him by the hair of his head; to hear his cry and laugh at it with horrid glee; to pluck out his beard by the roots; to force his feet into the stocks; to crush his fingers in the kittie; to place the many-legged beetle in his navel, and the burning chillie beneath his nostril.

You may alter all this if you have the will, for you have the power. You can destroy the Court of Directors, the ridiculous anomalies and irresponsibilities of, I will not say the double, but the treble Government of

India; and if you do this, you will give happiness to a hundred millions of human beings, increase the wealth and prosperity of your own countrymen, and gain for yourself an imperishable name. Then, to quote lines which you know exceedingly well,—

> "Qui motus animorum, et quanta pericula nostra
> Accipient facilem sine cæde et sanguine finem!"

Perhaps, as I have presumed to address you, I ought to say a few words about myself. I am no place-hunter, reviling official abuses from motives of disappointment; the office which I had the honour to hold was offered to me without any solicitation on my part, and resigned at my own wish. It is just as likely that any office in India which I would accept will be offered to me again, as that I should be asked to take a seat in the Cabinet. Had I ever hoped or wished for such an office, the chance of obtaining it would be destroyed by this publication. Lastly, I have no cause of dislike against the East India Company's Service. A very large number of my connections are in it—I might have been in it myself; and I have found amongst its members some of my most valued friends. I have therefore a right to demand that my evidence should be received as that of a man whose personal interests not only do not prompt its delivery, but urge powerfully to its concealment.

I have the honour to be, &c.,

T. H. DICKENS.

APPENDIX.

I THINK it worth while to extract the chapter on Mischief as a specimen of Macaulay's Code. It is taken at random from a mass of similar absurdities:—"Whoever causes the destruction of any property, or any such change in any property, or in the situation of any property, as destroys or diminishes the value of such property, intending thereby to cause wrongful loss to any person, is said, except in the case hereinafter mentioned, to commit mischief.

"*Explanation.*—A person may commit mischief on his own property.

"*Exception.*—Nothing is mischief which a person does openly, and with the intention in good faith of thereby saving any person from death or hurt, or of thereby preventing a greater loss of property than that which he occasions."

Of the illustrations, I take two again at random; here they are:—

"A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

"A voluntarily throws into the river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief."

It will be observed that it is not necessary that anybody else should have a reversion in the property destroyed by its owner. A man therefore wilfully breaking his own teacup is a felon under this law. Mischief is to be punishable by the magistrate: now think of the consequences of such a law to a man against whom that official had a spite. I will give a few illustrations, taking, on the supposition that Mr. Solano's charges against Mr. Swinton are correct, these two men as my *dramatis personæ*.

CASE I.—Mr. Solano is joint proprietor with a friend, more remarkable for acuteness than morality, of a racing Arab which has cost 5,000 rupees, and which the acute friend has backed to win the Calcutta Derby. The horse gets a painful and incurable disease. "I really think," says Solano to his friend, "it would be a mercy to shoot him." "Perhaps it would," says the acute friend; and he is shot by Solano's orders. "Now, Solano," says the other, "if you don't pay me 10,000 rupees to hold my tongue, I'll have you up, you mischievous villain, for shooting our horse, before Mr. Swinton! You will think the sum I demand large; but read the clauses 400, 402, 403, 404, 406, of the chapter on Mischief in Mr. Macaulay's excellent code; and you will see that you are liable to conviction under them all. I leave you to guess whether Mr. Swinton will let you off with less than the highest punishment. I know that it is very inconvenient to you; but be wise, pay me 10,000 rupees, and I won't prosecute."

Solano, if wise, does pay it; if he does not, I can fancy Mr. Swinton thus delivering judgment:—

"It is not denied that the accused shot the horse, but it is said that he shot it with the prosecutor's assent. The latter denies this, and it would be too much to hold that the words, 'Perhaps it would,' in answer to the remark of the accused, 'That it would be a mercy to shoot the horse,' conferred any authority or assent. The prisoner is clearly liable to conviction under all the clauses mentioned by the prosecutor. It is also clear that he is liable to be fined ten times the value of the horse. It has been urged that half the property in the horse was the accused's own, and that he ought therefore only to be fined five times the whole value of the horse. But that objection is ridiculous, as the explanation of this chapter clearly says, that a man may commit mischief on his own property, and therefore must, of course, be liable to punishment for that offence. I therefore sentence the accused Solano to imprisonment with hard labour in irons for three years, and I fine him 50,000 rupees; in default of payment he will be imprisoned for a further term of nine months."

CASE II.—Mr. Solano has lately bought one of Smith's best rifles, price £100. He goes out tiger shooting with a friend,

misses every shot, and at last, in a pet, flings his rifle down from the howdah, and it is broken. The friend innocently relates the circumstance in Mr. Swinton's hearing. He summons Solano; convicts him under clauses 400 and 403, of mischief to his own property; and sentences him to imprisonment for two years with hard labour in irons, and fines him 10,000 rupees.

Case III.—Mr. Solano breaks a teacup, value four annas, and picks up and throws the fragments into a rubbish heap. "Had you contented yourself with breaking your cup," says Mr. Swinton, "the highest punishment I could have inflicted for your crime would have been a fine of three shillings; but as you chose further to commit the crime of taking precaution not to be detected, as is clearly proved by your hiding the fragments of your cup, the sentence will be under clause 401. You are fined 2 rupees 8 annas, and will also be imprisoned for six months with hard labour in irons."

Well may the late Commissioners say, "We have not made [this code], collectively, a particular subject of our examination and consideration, further than was necessary, in order that we might be able to frame, in such a manner as to suit it, the Code of Criminal Procedure." But were they not bound to do this before they ventured to recommend its adoption?

T. H. D.

J. & W. Ridler, Printers, 14, Bartholomew Close, London.